

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 5, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 13
 DEFENDANT.)
)
) PAGES 1906 - 2176

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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30 FEDERAL BUREAU OF INVESTIGATION
31 BY: MARIO C. SCUSSEL

32 UNITED STATES FOOD & DRUG
33 ADMINISTRATION
34 BY: GEORGE SCAVDIS

INDEX OF PROCEEDINGS

GOVERNMENT'S:

SO HAN SPIVEY (DANISE YAM)

DIRECT EXAM BY MR. LEACH	P. 1920
CROSS-EXAM BY MR. COOPERSMITH	P. 2068
REDIRECT EXAM BY MR. LEACH	P. 2162
RECROSS-EXAM BY MR. COOPERSMITH	P. 2167

INDEX OF EXHIBITS

IDENT. EVIDENCE

GOVERNMENT'S

5797	1932
5172	1954
578	1964
792	1969
1901, PAGE TB 123113.XLSX	1974
5206	1979
3233	1989
5780	1998
5781	2001
5783	2003
5784	2005
5785	2006
5788	2008
5789	2009
5791	2010
5790	2012
5794	2014
5085	2019
3283	2022
5141	2028
3533	2031
3527	2032
5190	2035
5209	2040
2623	2041
4859, CONDITIONALLY ADMITTED	2045
5454	2050
5795	2053
5796	2056
372	2136
4176	2153

INDEX OF EXHIBITS

IDENT. EVIDENCE

DEFENDANT'S

7753	1994
13711	2025
20505	2077
20511	2081
20508	2083
20510	2090
20512	2093
20128	2099
20130	2102
20129	2108
20135	2110
20514	2128
20516	2133
20517	2134
20206	2142
20209	2144
20210	2144
20211	2145
20212	2146
20213	2148
20214	2149

SAN JOSE, CALIFORNIA

APRIL 5, 2022

P R O C E E D I N G S

(COURT CONVENED AT 9:00 A.M.)

(JURY OUT AT 9:00 A.M.)

THE COURT: LET'S GO ON THE RECORD IN THE BALWANI
MATTER. ALL COUNSEL ARE PRESENT AND MR. BALWANI IS PRESENT.

WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

I JUST WANTED TO INQUIRE ABOUT TODAY'S SCHEDULE. I SEE A
WITNESS, MS. YAM WILL BE TESTIFYING THIS MORNING I THINK.

MR. LEACH: THAT'S CORRECT.

THE COURT: AND DO WE ANTICIPATE WE'LL FINISH THIS
WITNESS TODAY?

MR. LEACH: YOUR HONOR, WE -- MAY I TAKE MY MASK
OFF?

THE COURT: YES, PLEASE.

MR. LEACH: I EXPECT TO HAVE ABOUT TWO AND A HALF
HOURS WITH MS. YAM ON THE DIRECT EXAMINATION. WE CONSULTED
WITH THE DEFENSE OVER THE WEEKEND AND MY UNDERSTANDING IS THAT
THEY ANTICIPATE WITH THE CROSS SHE'LL TAKE MOST IF NOT ALL OF
THE DAY TODAY.

THE COURT: OKAY.

IS THAT RIGHT, MR. COOPERSMITH?

MR. COOPERSMITH: YES, YOUR HONOR. OBVIOUSLY THE
USUAL VARIABLES APPLY.

THE COURT: SURE.

09:01AM 1 MR. COOPERSMITH: BUT WE'RE HOPING TO FINISH THE
09:01AM 2 WITNESS TODAY.

09:01AM 3 THE COURT: OKAY. I JUST WANTED TO GET YOUR
09:01AM 4 THOUGHTS ON THAT FOR SCHEDULING.

09:01AM 5 TOMORROW THEN, ASSUMING MR. PANDORI -- DR. PANDORI'S LAB
09:02AM 6 INSPECTION GOES WELL, WE'LL SEE HIM BACK TOMORROW.

09:02AM 7 MR. LEACH: THE PLAN IS TO CALL DR. PANDORI BACK.

09:02AM 8 AND THEN WE HAVE A SECOND WITNESS, I DON'T KNOW IF BETWEEN
09:02AM 9 THOSE TWO WITNESSES IT WILL TAKE THE ENTIRETY OF THE DAY,
09:02AM 10 CERTAINLY UNTIL 3:00 O'CLOCK OR UNTIL 4:00 O'CLOCK IF THAT'S
09:02AM 11 WHEN WE'RE GOING.

09:02AM 12 THE COURT: RIGHT.

09:02AM 13 MR. LEACH: BUT WE HAVE ANOTHER WITNESS AFTER
09:02AM 14 MR. PANDORI, AND IT ALL KIND OF DEPENDS ON HOW LONG MS. YAM
09:02AM 15 TAKES TODAY.

09:02AM 16 THE COURT: OKAY. I JUST WANTED TO GET THAT
09:02AM 17 SCHEDULE.

09:02AM 18 I BELIEVE I HAD ASKED THE JURY TO SEE IF WE COULD GO UNTIL
09:02AM 19 4:00 TODAY AND TOMORROW JUST TO CAPTURE AN EXTRA HOUR, AND I'LL
09:02AM 20 ASK THEM THAT QUESTION ALSO, IF WE NEEDED TODAY AND TOMORROW,
09:02AM 21 IT SOUNDS LIKE THAT WOULD BE HELPFUL.

09:02AM 22 MR. LEACH: IT WOULD, YOUR HONOR.

09:02AM 23 WE DON'T -- IT'S JUST MS. YAM TODAY THOUGH?

09:02AM 24 THE COURT: RIGHT.

09:02AM 25 MR. LEACH: SO IF HOPE SPRINGS ETERNAL AND WE GET

09:02AM 1 UNTIL A POINT WHERE IT'S 3:00 AND THE REDIRECT IS DONE, AND
09:02AM 2 THERE'S NO CROSS, I DON'T THINK WE WOULD NEED THAT -- WE
09:03AM 3 WOULDN'T HAVE A WITNESS TO FILL THAT EXTRA HOUR TODAY.

09:03AM 4 THE COURT: OKAY. ANYTHING FURTHER ON THAT,
09:03AM 5 MR. COOPERSMITH?

09:03AM 6 MR. COOPERSMITH: NO, YOUR HONOR. THAT'S FINE.
09:03AM 7 THANK YOU.

09:03AM 8 THE COURT: OKAY.

09:03AM 9 MR. COOPERSMITH: ONE SMALL MATTER WITH MS. YAM IF I
09:03AM 10 COULD RAISE IT. I WAS CONFERRING WITH MR. LEACH BEFORE YOU
09:03AM 11 CAME OUT TODAY.

09:03AM 12 THE COURT: SURE.

09:03AM 13 MR. COOPERSMITH: THERE IS AN EXHIBIT THAT I
09:03AM 14 UNDERSTAND THE GOVERNMENT PLANS TO USE WITH MS. YAM. I THINK
09:03AM 15 IT'S EXHIBIT 431, IF THAT'S THE RIGHT NUMBER?

09:03AM 16 MR. LEACH: IT SOUNDS RIGHT.

09:03AM 17 MR. COOPERSMITH: AND WHAT IT IS IS AN EMAIL THAT
09:03AM 18 MS. YAM -- I THINK WE SHOULD CALL HER MS. SPIVEY. I THINK
09:03AM 19 THAT'S WHAT SHE GOES BY, MS. SPIVEY.

09:03AM 20 MS. SPIVEY HAS AN EMAIL, AND THEN ATTACHED TO IT THERE'S A
09:03AM 21 REPORT, AND THE COURT MAY REMEMBER ONE OF THE REPORTS THAT
09:03AM 22 DEALS WITH THE PHARMACEUTICAL COMPANY, IN THIS CASE IT'S
09:03AM 23 PFIZER, AND SO IT'S -- THIS IS THE SUBJECT OF A PENDING MOTION,
09:03AM 24 AND THERE'S -- THE REPORT THAT THE GOVERNMENT WANTS TO PUT IN
09:03AM 25 DOES NOT HAVE THE PFIZER LOGO ON IT, OKAY?

09:03AM 1 I UNDERSTAND FROM MR. LEACH, AND I APPRECIATE THIS, THAT
09:04AM 2 HE'S NOT PLANNING ON DRAWING THE ATTENTION TO THE LACK OF A
09:04AM 3 LOGO WITH THIS WITNESS. SO FOR THAT, I DON'T THINK THERE HAS
09:04AM 4 TO BE A RULING ON THAT BEFORE THIS WITNESS.

09:04AM 5 THE ONLY THING I WANTED TO MENTION IS THAT IT DOES SORT OF
09:04AM 6 SET THE STAGE FOR WHEN THIS ISSUE MOST LIKELY SURFACES AGAIN AT
09:04AM 7 TRIAL, WE'LL NOW HAVE A DOCUMENT IN EVIDENCE THAT DOESN'T HAVE
09:04AM 8 THE LOGO.

09:04AM 9 I UNDERSTAND THAT MR. LEACH IS NOT GOING TO DRAW ATTENTION
09:04AM 10 TO THAT ISSUE TODAY, BUT I JUST WANTED TO MAKE SURE EVERYONE
09:04AM 11 WAS AWARE, ESPECIALLY THE COURT, THAT IN THE FUTURE IF THEY PUT
09:04AM 12 IN THE DOCUMENT WITH THE LOGO, THEN WE DO HAVE THE TWO
09:04AM 13 DOCUMENTS, ONE WITH THE LOGO AND ONE WITHOUT, AND WE'VE ASKED
09:04AM 14 THAT THE COURT GO ONE DIRECTION OR THE OTHER, RIGHT?

09:04AM 15 AND I JUST WANTED TO RAISE THAT JUST TO MAKE SURE WE'RE
09:04AM 16 ALL ON THE SAME PAGE.

09:04AM 17 THE COURT: OKAY. IS THAT LIKELY TO BE AN ISSUE
09:04AM 18 TODAY WITH MS. SPIVEY?

09:04AM 19 MR. LEACH: THE DOCUMENT IN QUESTION, YOUR HONOR,
09:04AM 20 MS. SPIVEY IS CALLED ON TO MAKE DECISIONS ABOUT WHETHER TO
09:04AM 21 RECOGNIZE REVENUE OR NOT RECOGNIZE REVENUE ON SOME OF THE
09:05AM 22 RELATIONSHIPS WITH THE PHARMACEUTICAL COMPANIES.

09:05AM 23 IN THE COURSE OF DOING THAT, SHE ASKED MS. HOLMES FOR
09:05AM 24 EVIDENCE THAT THE WORK HAD BEEN PERFORMED AND SHE RECEIVED
09:05AM 25 EVIDENCE IN THE FORM OF A REPORT THAT DOESN'T HAVE THE PFIZER

09:05AM 1 LOGO ON IT, AND IT WAS ADMITTED IN THE HOLMES CASE AND I THINK
09:05AM 2 IT'S RELEVANT TO HER RECOGNITION ASSESSMENT.

09:05AM 3 I AGREE WITH MR. COOPERSMITH THAT THE ISSUE OF WHETHER THE
09:05AM 4 GOVERNMENT CAN CALL ATTENTION -- AND THE INVESTORS ARE GOING TO
09:05AM 5 COME IN LATER AND TESTIFY TO RECEIPT OF ANOTHER VERSION OF THAT
09:05AM 6 REPORT WITH THE PFIZER LOGO ON IT.

09:05AM 7 SO I AGREE WITH MR. COOPERSMITH THAT THAT ISSUE IS GOING
09:05AM 8 TO EMERGE AT SOME POINT. I'M NOT EXACTLY SURE WHEN.

09:05AM 9 BUT MY ONLY GOAL WITH MS. SPIVEY IS TO MAKE SURE THAT THE
09:05AM 10 DOCUMENT IS IN EVIDENCE. I THINK IT'S RELEVANT TO HER REVENUE
09:05AM 11 RECOGNITION DETERMINATIONS.

09:05AM 12 I DON'T NEED TO CALL ATTENTION TO THE FACT OF THE LOGO
09:05AM 13 TODAY, AND DEPENDING ON THE COURT'S RULING, WE'RE PREPARED TO
09:06AM 14 MAKE WHATEVER REDACTIONS TO THE DOCUMENT ARE NECESSARY TO
09:06AM 15 CONFORM WITH THAT.

09:06AM 16 WE DON'T THINK ANY OF THAT IS NECESSARY, BUT I DON'T THINK
09:06AM 17 IT'S, IT'S LIKELY TO EMERGE AS AN ISSUE IN THE NEXT FEW HOURS.

09:06AM 18 THERE ARE SOME PHARMA WITNESSES COMING SOON.

09:06AM 19 THE COURT: SURE.

09:06AM 20 MR. LEACH: AND THAT'S WHERE WE ARE.

09:06AM 21 THE COURT: OKAY. GREAT.

09:06AM 22 MR. COOPERSMITH: I THINK THAT'S FINE, YOUR HONOR.

09:06AM 23 WHAT IT SOUNDS LIKE IS LATER WHEN THE GOVERNMENT TRIES TO
09:06AM 24 OFFER THE OTHER VERSION WITH THE LOGOS, WE'D HAVE TO TAKE THAT
09:06AM 25 UP AT THAT POINT.

09:06AM 1 BUT IT SOUNDS LIKE FOR THIS WITNESS IT WON'T BE SOMETHING
09:06AM 2 THAT IS DRAWN THE JURY'S ATTENTION TO. I THINK IT SHOULD BE
09:06AM 3 OKAY TODAY.

09:06AM 4 THE COURT: RIGHT. OKAY. THANK YOU. THANK YOU FOR
09:06AM 5 THAT, FOR THE HEADS UP.

09:06AM 6 THERE WAS ALSO, I THINK, MR. COOPERSMITH, YOUR TEAM FILED
09:06AM 7 SOMETHING ABOUT 14 HOURS AGO IN REGARDS TO SOME DOCUMENTS THAT
09:06AM 8 WE TALKED ABOUT FRIDAY --

09:06AM 9 MR. COOPERSMITH: YES, YOUR HONOR.

09:06AM 10 THE COURT: -- I THINK. AND I HAD -- I JUST WANTED
09:06AM 11 TO -- I THINK -- I DON'T HAVE IT IN FRONT OF ME. IT'S ON MY
09:07AM 12 DESK.

09:07AM 13 BUT I THINK YOUR PLEADINGS SCHEDULED SOMETHING FOR
09:07AM 14 TOMORROW MORNING.

09:07AM 15 MR. COOPERSMITH: WE WEREN'T BEING PRESUMPTUOUS.

09:07AM 16 THE COURT: NO, NO. THAT'S WHAT THE PLEADING SAID.

09:07AM 17 AND I JUST WANTED TO INDICATE THAT I LOOKED THIS OVER
09:07AM 18 AFTER OUR CONVERSATION FRIDAY, AND I THINK I SAID WE'RE ALL
09:07AM 19 GOING TO LOOK AT THE TRANSCRIPT AND REFLECT ON THINGS, AND I
09:07AM 20 HAD DONE THAT, AND INCLUDING YESTERDAY, AND I JUST WANT TO SAY,
09:07AM 21 I HAD MADE A DECISION BEFORE YOU FILED THIS DOCUMENT TO ADMIT
09:07AM 22 THAT, TO ALLOW THAT -- THOSE DOCUMENTS TO COME IN, AND I'M
09:07AM 23 SAYING THIS NOW SO THAT NEITHER TEAM HAS TO INVEST ANY
09:07AM 24 ADDITIONAL TIME.

09:07AM 25 AND FOR YOUR PURPOSE, MR. LEACH, RESPONDING IN WRITING IF

09:07AM 1 YOU CHOSE TO DO SO, I'M NOT GOING TO PRECLUDE YOU FROM DOING
09:07AM 2 THAT. OF COURSE IF YOU WANT TO BE HEARD, I'M HAPPY TO HEAR
09:07AM 3 FROM YOU ON THAT.

09:07AM 4 BUT I JUST WANTED TO LET YOU KNOW IN ADVANCE OF THAT.

09:07AM 5 AND I SCANNED YOUR PLEADING THIS MORNING, BUT AS I SAID, I
09:08AM 6 HAD DECIDED AFTER READING THE TRANSCRIPT AND EVERYTHING AND AS
09:08AM 7 LATE AS YESTERDAY, AS EARLY AS THE WEEKEND THAT I'LL ADMIT
09:08AM 8 THAT. I THINK IT WAS 20249 I THINK IT WAS?

09:08AM 9 MR. COOPERSMITH: IT'S 20279.

09:08AM 10 THE COURT: 79, YES. THANK YOU.

09:08AM 11 MR. COOPERSMITH: AND THE PLEADING HAS ANOTHER
09:08AM 12 EXHIBIT THAT IS VERY SIMILAR.

09:08AM 13 THE COURT: YEAH, RIGHT.

09:08AM 14 MR. COOPERSMITH: BUT I APPRECIATE THAT.

09:08AM 15 THE COURT: SO I JUST WANT TO LET YOU KNOW THAT.

09:08AM 16 MR. LEACH: THANK YOU, YOUR HONOR. WE APPRECIATE
09:08AM 17 THAT.

09:08AM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR. I'M SORRY
09:08AM 19 TO BURDEN THE COURT WITH MORE PAPER YESTERDAY.

09:08AM 20 THE COURT: NO, NO, NO, NO. TO PARAPHRASE EMERSON,
09:08AM 21 YOU KNOW, FINISH EACH DAY AND BE DONE WITH IT. TOMORROW IS A
09:08AM 22 NEW DAY AND BEGIN IT WELL AND SERENELY, AND SO THAT'S WHAT
09:08AM 23 WE'LL DO.

09:08AM 24 ALL RIGHT. THANKS.

09:08AM 25 MR. COOPERSMITH: YES, YOUR HONOR.

09:08AM 1 THE COURT: ALL RIGHT. WE'LL BRING OUR JURY IN IN
09:08AM 2 JUST A MOMENT THEN. THANK YOU.

09:08AM 3 (RECESS FROM 9:08 A.M. UNTIL 9:13 A.M.)

09:13AM 4 (JURY IN AT 9:13 A.M.)

09:13AM 5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
09:13AM 6 WE'RE BACK ON THE RECORD. ALL COUNSEL ARE PRESENT.

09:13AM 7 MR. BALWANI IS PRESENT.

09:13AM 8 OUR JURY AND ALTERNATES ARE PRESENT.

09:13AM 9 GOOD MORNING, LADIES AND GENTLEMEN. IT'S NICE TO SEE YOU
09:13AM 10 AGAIN. I HOPE YOU ENJOYED YOUR WEEKEND.

09:13AM 11 LET ME ASK YOU THE QUESTION THAT YOU KNOW IS COMING.

09:13AM 12 DURING THE BREAK, DID ANY OF YOU HAVE CAUSE TO BE EXPOSED TO,
09:13AM 13 TO DISCUSS, SEE, OR WATCH OR LISTEN TO ANYTHING TO DO WITH THIS
09:14AM 14 CASE? IF SO, WOULD YOU PLEASE RAISE YOUR HAND.

09:14AM 15 ONCE AGAIN, I SEE NO HANDS.

09:14AM 16 THANK YOU VERY MUCH, LADIES AND GENTLEMEN, FOR YOUR
09:14AM 17 ATTENTION TO THIS.

09:14AM 18 I WANTED TO TELL YOU ALSO A COUPLE OF THINGS. I HAD ASKED
09:14AM 19 LAST WEEK IF WE COULD GO UNTIL 4:00 O'CLOCK TODAY.

09:14AM 20 DOES THAT PRESENT A PROBLEM FOR ANYONE?

09:14AM 21 I SEE NO HANDS. THANK YOU.

09:14AM 22 I'D LIKE TO GO UNTIL 4:00 TOMORROW AS WELL, AND RECALL
09:14AM 23 THAT'S OUR LAST DAY IN SESSION THIS WEEK.

09:14AM 24 DOES GOING UNTIL 4:00 TOMORROW PRESENT AN ISSUE FOR
09:14AM 25 ANYONE?

09:14AM 1 AGAIN, I SEE NO HANDS.

09:14AM 2 THANK YOU VERY MUCH. THANK YOU, FOLKS.

09:14AM 3 FOR TODAY WE WILL BE TAKING A WITNESS OUT OF ORDER BECAUSE

09:14AM 4 OF SOME SCHEDULING ISSUES.

09:14AM 5 AND LET ME JUST SAY, THIS HAPPENS WITH FREQUENCY IN

09:14AM 6 TRIALS. SOMETIMES WITNESS'S SCHEDULES AND OTHER SCHEDULING

09:14AM 7 CONFLICTS AFFECT HOW A WITNESS CAN CONTINUE WITH THEIR

09:14AM 8 TESTIMONY.

09:14AM 9 WE'RE GOING TO INTERRUPT DR. PANDORI'S TESTIMONY THIS

09:15AM 10 MORNING WITH ANOTHER WITNESS WHO I BELIEVE WE WILL BE ABLE TO

09:15AM 11 COMPLETE TODAY.

09:15AM 12 AND THEN TOMORROW WE'LL RESUME WITH DR. PANDORI'S

09:15AM 13 TESTIMONY.

09:15AM 14 IS THAT ACCURATE, MR. LEACH, AND MR. BOSTIC?

09:15AM 15 MR. LEACH: YES, YOUR HONOR, IT IS.

09:15AM 16 THE COURT: MR. COOPERSMITH, IS THAT ACCURATE?

09:15AM 17 MR. COOPERSMITH: YES, YOUR HONOR.

09:15AM 18 THE COURT: ALL RIGHT. THANK YOU.

09:15AM 19 THEN DOES THE GOVERNMENT HAVE A WITNESS TO CALL THEN AT

09:15AM 20 THIS TIME?

09:15AM 21 MR. LEACH: WE DO, YOUR HONOR.

09:15AM 22 THE UNITED STATES CALLED SO HAN SPIVEY.

09:15AM 23 THE COURT: THANK YOU.

09:15AM 24 GOOD MORNING. IF YOU COULD PLEASE COME FORWARD. AND IF

09:15AM 25 YOU COULD STAND OVER HERE BY THE WITNESS STAND HERE, FACE OUR

09:15AM 1 COURTROOM DEPUTY WHILE YOU RAISE YOUR RIGHT HAND, SHE HAS A
09:15AM 2 QUESTION FOR YOU.

09:15AM 3 **(GOVERNMENT'S WITNESS, SO HAN SPIVEY, WAS SWORN.)**

09:15AM 4 THE WITNESS: YES.

09:16AM 5 THE COURT: PLEASE TAKE A SEAT HERE. THANK YOU.

09:16AM 6 LET ME INVITE YOU TO MAKE YOURSELF TO BE COMFORTABLE.

09:16AM 7 FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED. I'LL
09:16AM 8 ENCOURAGE YOU TO SPEAK DIRECTLY INTO THE MICROPHONE.

09:16AM 9 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
09:16AM 10 AND THEN SPELL IT, PLEASE.

09:16AM 11 THE WITNESS: SO HAN SPIVEY. S-O, H-A-N,
09:16AM 12 S-P-I-V-E-Y.

09:16AM 13 THE COURT: THANK YOU.

09:16AM 14 COUNSEL.

09:16AM 15 MR. LEACH: THANK YOU, YOUR HONOR. MAY I REMOVE MY
09:16AM 16 MASK?

09:16AM 17 THE COURT: YES, YES.

09:16AM 18 **DIRECT EXAMINATION**

09:16AM 19 BY MR. LEACH:

09:16AM 20 Q. GOOD MORNING, MS. SPIVEY. HOW ARE YOU?

09:16AM 21 A. GOOD.

09:16AM 22 Q. IF YOU ARE VACCINATED, I UNDERSTAND YOU HAVE THE COURT'S
09:16AM 23 PERMISSION TO TESTIFY WITHOUT A MASK IF THAT'S OKAY?

09:16AM 24 A. YES.

09:16AM 25 Q. WAS THERE A TIME WHEN YOU WORKED FOR A COMPANY CALLED

09:17AM 1 THERANOS?

09:17AM 2 A. YES.

09:17AM 3 Q. AND WHAT WAS YOUR JOB AT THERANOS?

09:17AM 4 A. I WAS THE CONTROLLER.

09:17AM 5 Q. OKAY. ROUGHLY, WHAT TIME PERIOD DID YOU SERVE AS THE

09:17AM 6 CONTROLLER OF THERANOS?

09:17AM 7 A. FROM 2006 TO 2017.

09:17AM 8 Q. AND CAN YOU BRIEFLY DESCRIBE FOR US WHAT YOUR JOB

09:17AM 9 RESPONSIBILITIES WERE AS THE CONTROLLER AT THERANOS?

09:17AM 10 A. I MANAGED ALL ASPECTS OF ACCOUNTING FOR THE COMPANY AND

09:17AM 11 PAYING INVOICES, MAKING SURE ALL OF THE FINANCIAL RECORDS ARE

09:17AM 12 CORRECT, AND DOING PAYROLLS, AND SOME EQUITY ACTIONS.

09:17AM 13 Q. WE'LL COME BACK TO YOUR RESPONSIBILITIES AS THE CONTROLLER

09:17AM 14 AT THERANOS, BUT WHY DON'T WE STEP BACK IN TIME.

09:17AM 15 IF YOU COULD PLEASE DESCRIBE FOR US HERE YOUR EDUCATIONAL

09:17AM 16 BACKGROUND?

09:17AM 17 A. I GRADUATED WITH AN ACCOUNTING DEGREE AT CARLTON

09:18AM 18 UNIVERSITY IN 1998.

09:18AM 19 I GOT MY MBA DEGREE AT UNIVERSITY OF ROCHESTER IN 2005.

09:18AM 20 Q. CARLTON UNIVERSITY, YOU OBTAINED A DEGREE FROM THERE IN

09:18AM 21 1998?

09:18AM 22 A. YES.

09:18AM 23 Q. IN ACCOUNTING?

09:18AM 24 A. YES.

09:18AM 25 Q. OKAY. AND WHERE IS CARLTON UNIVERSITY?

09:18AM 1 A. IN OTTAWA.

09:18AM 2 Q. OKAY. AFTER OBTAINING YOUR DEGREE FROM CARLTON

09:18AM 3 UNIVERSITY, DID YOU GO INTO THE WORK FORCE?

09:18AM 4 A. YES. I WORKED FOR DELOITTE IN HONG KONG.

09:18AM 5 Q. WHAT IS DELOITTE IN HONG KONG? WHAT DOES DELOITTE DO?

09:18AM 6 A. DELOITTE IS AN ACCOUNTING FIRM.

09:18AM 7 Q. OKAY. AND WHAT WAS YOUR JOB AT DELOITTE IN HONG KONG?

09:18AM 8 A. I WAS A SENIOR AUDITOR.

09:18AM 9 Q. OKAY. COULD YOU PLEASE TELL US WHAT YOU DID AS A SENIOR

09:18AM 10 AUDITOR AT DELOITTE IN HONG KONG?

09:18AM 11 A. AT A HIGH LEVEL, I EXAMINED BOTH THE RECORDS OF THE

09:19AM 12 COMPANY TO MAKE SURE THAT THEIR FINANCIAL STATEMENTS ARE FAIRLY

09:19AM 13 STATED.

09:19AM 14 Q. OKAY. IN THE COURSE OF YOUR WORK AT DELOITTE HONG KONG,

09:19AM 15 DID YOU BECOME FAMILIAR WITH BALANCE SHEETS OF PRIVATE AND

09:19AM 16 PUBLIC COMPANIES?

09:19AM 17 A. YES.

09:19AM 18 Q. OKAY. WHAT IS A BALANCE SHEET?

09:19AM 19 A. IT'S A LIST THAT SUMMARIZES THE BALANCES OF ASSETS,

09:19AM 20 LIABILITIES, AND EQUITIES OF THE COMPANY.

09:19AM 21 Q. OKAY. AND YOU SAID YOU DID WORK FOR BOTH PRIVATE AND

09:19AM 22 PUBLIC COMPANIES AT DELOITTE IN HONG KONG?

09:19AM 23 A. YES.

09:19AM 24 Q. AND WHAT IS THE DIFFERENCE BETWEEN A PRIVATE AND A PUBLIC

09:19AM 25 COMPANY?

09:19AM 1 A. A PUBLIC COMPANY IS -- THEIR STOCK IS TRADED IN THE PUBLIC
09:19AM 2 MARKET.

09:19AM 3 Q. OKAY. AND THE COMPANIES YOU WERE SERVING AS THE AUDITOR
09:19AM 4 FOR AT DELOITTE HONG KONG, DID YOU WORK INSIDE OF THE COMPANY
09:19AM 5 OR DID YOU WORK OUTSIDE OF THE COMPANY?

09:19AM 6 A. IT'S OUTSIDE OF THE COMPANY.

09:20AM 7 Q. OKAY. AND DESCRIBE THAT DISTINCTION FOR US. WHAT DOES
09:20AM 8 THAT MEAN?

09:20AM 9 A. IT MEANS I WAS AN EMPLOYEE FOR DELOITTE AND WE'RE
09:20AM 10 INDEPENDENT FROM THE COMPANY.

09:20AM 11 Q. AND COMPANIES WOULD HIRE DELOITTE TO AUDIT THE FINANCIAL
09:20AM 12 STATEMENTS OF THEIR COMPANIES?

09:20AM 13 A. YES.

09:20AM 14 Q. OKAY. DURING YOUR TIME AT DELOITTE, DID YOU BECOME
09:20AM 15 FAMILIAR WITH INCOME STATEMENTS FOR PRIVATE AND PUBLIC
09:20AM 16 COMPANIES?

09:20AM 17 A. YES.

09:20AM 18 Q. WHAT IS AN INCOME STATEMENT?

09:20AM 19 A. IT SUMMARIZES THE INCOME COSTS AND EXPENSES FOR THE
09:20AM 20 COMPANY.

09:20AM 21 Q. HOW DOES AN INCOME STATEMENT DIFFER FROM A BALANCE SHEET?

09:20AM 22 A. INCOME STATEMENT SUMMARIZES THE THREE CATEGORIES THAT I
09:20AM 23 JUST TALKED ABOUT FOR A PERIOD OF TIME AND BALANCES FOR A
09:20AM 24 SPECIFIC TIME.

09:20AM 25 Q. OKAY. AND HOW LONG DID YOU WORK FOR DELOITTE IN

09:20AM 1 HONG KONG?

09:20AM 2 A. ABOUT FOUR YEARS.

09:20AM 3 Q. WHAT DID YOU DO AFTER THAT?

09:21AM 4 A. AND I WENT TO ROCHESTER TO GET MY MBA DEGREE.

09:21AM 5 Q. YOUR MBA DEGREE?

09:21AM 6 A. YES.

09:21AM 7 Q. OKAY. DID YOU HAVE A PARTICULAR CONCENTRATION WITHIN YOUR

09:21AM 8 MBA?

09:21AM 9 A. ACCOUNTING.

09:21AM 10 Q. AFTER OBTAINING YOUR MBA FROM THE UNIVERSITY OF

09:21AM 11 ROCHESTER -- ROUGHLY WHEN WAS THAT?

09:21AM 12 A. 2003 THROUGH 2005.

09:21AM 13 Q. OKAY. AFTER OBTAINING YOUR MBA, WHAT DID YOU DO AFTER

09:21AM 14 THAT?

09:21AM 15 A. I WORKED FOR DELOITTE IN THE SAN JOSE OFFICE.

09:21AM 16 Q. SAN JOSE, CALIFORNIA?

09:21AM 17 A. YES.

09:21AM 18 Q. SO HERE IN THE BAY AREA?

09:21AM 19 A. YES.

09:21AM 20 Q. AND WHAT IS THE DIFFERENCE BETWEEN DELOITTE IN SAN JOSE

09:21AM 21 AND DELOITTE IN HONG KONG?

09:21AM 22 A. NO DIFFERENCE.

09:21AM 23 Q. OKAY. SO YOU WERE DOING SIMILAR TYPE OF WORK OF WHAT YOU

09:21AM 24 WERE DOING FOR PRIVATE AND PUBLIC COMPANIES IN HONG KONG?

09:21AM 25 A. YES.

09:21AM 1 Q. OKAY. WHAT WAS YOUR JOB TITLE AT DELOITTE IN SAN JOSE?

09:21AM 2 A. SENIOR AUDITOR.

09:21AM 3 Q. OKAY. AND IN THE COURSE OF BEING A SENIOR AUDITOR, WOULD

09:22AM 4 YOU EXAMINE THE BALANCE SHEETS OF PUBLIC AND PRIVATE COMPANIES?

09:22AM 5 A. YES.

09:22AM 6 Q. AND WOULD YOU EXAMINE THE INCOME STATEMENTS OF PRIVATE AND

09:22AM 7 PUBLIC COMPANIES?

09:22AM 8 A. YES.

09:22AM 9 Q. HOW LONG DID YOU WORK FOR DELOITTE IN SAN JOSE?

09:22AM 10 A. ABOUT ONE YEAR.

09:22AM 11 Q. OKAY. WHAT DID YOU DO AFTER THAT?

09:22AM 12 A. I JOINED THERANOS AS A CONTROLLER.

09:22AM 13 Q. OKAY. AND I THINK YOU SAID THAT WAS IN 2006?

09:22AM 14 A. YES.

09:22AM 15 Q. OKAY. I WANT TO WALK THROUGH A LITTLE BIT ABOUT YOUR

09:22AM 16 TENURE WITHIN THERANOS AND THEN COME BACK TO SOME OF YOUR JOB

09:22AM 17 RESPONSIBILITIES THERE.

09:22AM 18 SO WHEN YOU STARTED IN 2006, WHO DID YOU REPORT TO?

09:22AM 19 A. HOWARD BAILEY, THE CHIEF FINANCIAL OFFICER.

09:22AM 20 Q. MR. BAILEY WAS THE CHIEF FINANCIAL OFFICER?

09:22AM 21 A. YES.

09:22AM 22 Q. AND IS THERE AN ACRONYM ASSOCIATED WITH CHIEF FINANCIAL

09:22AM 23 OFFICER?

09:22AM 24 A. CFO.

09:22AM 25 Q. HOW LONG DID YOU REPORT TO MR. BAILEY FOR?

09:22AM 1 A. A COUPLE MONTHS. HE LEFT THE COMPANY A COUPLE MONTHS
09:23AM 2 AFTER I JOINED.

09:23AM 3 Q. OKAY. AT ANY POINT IN TIME WHEN MR. BAILEY LEFT THE
09:23AM 4 COMPANY A COUPLE MONTHS AFTER 2006, DID THERANOS HIRE ANOTHER
09:23AM 5 CHIEF FINANCIAL OFFICER?

09:23AM 6 A. NO.

09:23AM 7 Q. AFTER MR. BAILEY LEFT, WHO DID YOU REPORT TO?

09:23AM 8 A. IMMEDIATELY AFTER HE LEFT I REPORTED TO ELIZABETH HOLMES.

09:23AM 9 Q. WHEN YOU JOINED THE COMPANY, WAS THERE ANYBODY ELSE IN THE
09:23AM 10 FINANCE DEPARTMENT BESIDES YOU AND MR. BAILEY?

09:23AM 11 A. THERE WAS A CONTROLLER BEFORE ME. HE WORKED -- HE WAS
09:23AM 12 TRANSITIONING. HE WORKED THERE FOR A MONTH TO TRANSITION THE
09:23AM 13 RESPONSIBILITY TO ME.

09:23AM 14 Q. OKAY. WAS THERE ANYBODY MORE SENIOR THAN YOU BETWEEN YOU
09:24AM 15 AND MR. BAILEY FOR ANY PERIOD OF TIME BEFORE YOU STARTED
09:24AM 16 REPORTING TO MS. HOLMES?

09:24AM 17 A. WHEN MR. BAILEY WAS THERE, NO.

09:24AM 18 Q. OKAY. DID EVER -- THERANOS EVER HAVE A POSITION CALLED
09:24AM 19 SENIOR FINANCE DIRECTOR?

09:24AM 20 A. YES.

09:24AM 21 Q. OKAY. WHO HELD THAT ROLE?

09:24AM 22 A. HER NAME WAS RUCHITA SINGHAL, R-U-C-H-I-T-A, AND THE LAST
09:24AM 23 NAME IS S-I-N-G-H-A-L.

09:24AM 24 Q. AND DID MS. SINGHAL STAY WITH THE COMPANY DURING YOUR
09:24AM 25 TENURE?

09:24AM 1 A. SHE STAYED FOR ABOUT ONE YEAR.

09:24AM 2 Q. ABOUT ONE YEAR.

09:24AM 3 AND AFTER MS. SINGHAL LEFT, DID THERANOS REPLACE ANYBODY

09:24AM 4 IN THE SENIOR DIRECTOR OF FINANCE POSITION?

09:25AM 5 A. NO.

09:25AM 6 Q. SO AFTER MR. BAILEY AND MS. SINGHAL LEAVE, WERE YOU THE

09:25AM 7 SENIOR-MOST FINANCE OFFICER WITHIN THE COMPANY?

09:25AM 8 A. YES.

09:25AM 9 Q. AND DID THAT REMAIN TRUE ALL OF THE WAY THROUGH 2015?

09:25AM 10 A. YES.

09:25AM 11 Q. OKAY. AND BETWEEN THE SUMMER OF 2008 AND OCTOBER OF 2015,

09:25AM 12 AT ANY POINT IN TIME DID THERANOS HAVE A CHIEF FINANCIAL

09:25AM 13 OFFICER AFTER MR. BAILEY LEFT?

09:25AM 14 A. NO.

09:25AM 15 Q. OKAY. YOU SAID YOU REPORTED DIRECTLY TO MS. HOLMES?

09:25AM 16 A. YES.

09:25AM 17 Q. WHEN DID THAT START?

09:25AM 18 A. FOR A SHORT PERIOD AFTER -- BETWEEN MR. BAILEY AND

09:25AM 19 MS. SINGHAL, AND THEN AFTER MS. SINGHAL LEFT IN 2008, THEN I

09:26AM 20 STARTED REPORTING TO MS. HOLMES DIRECTLY.

09:26AM 21 Q. OKAY. YOU SPOKE A LITTLE BIT ABOUT YOUR RESPONSIBILITIES

09:26AM 22 AS THE CONTROLLER, AND YOU MENTIONED -- CAN YOU JUST DESCRIBE

09:26AM 23 FOR US THOSE RESPONSIBILITIES AGAIN, PLEASE?

09:26AM 24 A. YES. SO I MANAGED ALL ASPECTS OF ACCOUNTING, INCLUDING

09:26AM 25 PREPARING FINANCIAL STATEMENTS, MAKING SURE THE FINANCIAL

09:26AM 1 RECORDS ARE ACCURATE, AND, YOU KNOW, THAT'S INCLUDING MAKING
09:26AM 2 SURE ALL OF THE EXPENSES ARE RECORDED AND WE PAY OUR VENDORS
09:26AM 3 ACCORDINGLY, AND THE PAYROLL EXPENSES AND THINGS LIKE THAT.
09:26AM 4 Q. OKAY. DID YOUR RESPONSIBILITIES INCLUDE PREPARING BALANCE
09:26AM 5 SHEETS ON BEHALF OF THE COMPANY?
09:26AM 6 A. YES.
09:26AM 7 Q. AND DID YOUR RESPONSIBILITIES INCLUDE PREPARING INCOME
09:26AM 8 STATEMENTS FOR THE COMPANY?
09:26AM 9 A. YES.
09:26AM 10 Q. AND DID YOUR RESPONSIBILITIES INCLUDE PREPARING SUMMARIES
09:26AM 11 OF THE COMPANY'S CASH POSITION FROM TIME TO TIME?
09:26AM 12 A. YES.
09:26AM 13 Q. AND DID YOU REPORT ABOUT THOSE MATTERS TO MS. HOLMES?
09:27AM 14 A. YES.
09:27AM 15 Q. HOW ABOUT BUDGETING? DID YOU HAVE ANY RESPONSIBILITY FOR
09:27AM 16 PREPARING BUDGETS?
09:27AM 17 A. NO.
09:27AM 18 Q. HOW ABOUT FINANCIAL PROJECTIONS? DID YOU HAVE ANY
09:27AM 19 RESPONSIBILITY FOR PREPARING FINANCIAL PROJECTIONS ON BEHALF OF
09:27AM 20 THE COMPANY?
09:27AM 21 A. YES. I DO THAT FOR THE COMPANY VALUATION PURPOSE.
09:27AM 22 Q. OKAY. WE'LL GET TO THAT A LITTLE BIT IN A MOMENT.
09:27AM 23 BUT DO YOU KNOW IF ANYBODY ELSE IN THE FINANCE PART OF THE
09:27AM 24 ORGANIZATION HAD RESPONSIBILITY FOR BUDGETING?
09:27AM 25 A. NO.

09:27AM 1 Q. OKAY. AT SOME POINT IN TIME DID MR. BALWANI JOIN THE
09:27AM 2 COMPANY?

09:27AM 3 A. YES.

09:27AM 4 Q. WHEN WAS THAT?

09:27AM 5 A. IN 2009.

09:27AM 6 Q. AND DID YOU HAVE OCCASION TO INTERACT WITH MR. BALWANI
09:27AM 7 ABOUT THE FINANCIAL CONDITION OF THE COMPANY?

09:27AM 8 A. YES.

09:27AM 9 Q. DESCRIBE THAT FOR US, PLEASE.

09:27AM 10 A. SO WHEN HE JOINED THE COMPANY IN 2009, FROM TIME TO TIME
09:28AM 11 HE WOULD ASK ME FOR INFORMATION OF THE COMPANY FINANCIAL
09:28AM 12 CONDITION, YOU KNOW, THE BALANCE SHEET, INCOME STATEMENTS.

09:28AM 13 SOMETIMES IT'S MORE TOWARDS 2013, '14, LATER ON THAT WE WOULD
09:28AM 14 INTERACT MORE REGULARLY. BUT AT THE BEGINNING IT WAS
09:28AM 15 IRREGULAR.

09:28AM 16 Q. I HEAR YOU SAYING THAT YOUR INTERACTIONS WITH MR. BALWANI
09:28AM 17 INCREASED OVER TIME.

09:28AM 18 IS THAT FAIR?

09:28AM 19 A. YES.

09:28AM 20 Q. AND WOULD THAT INCREASED PERIOD OF ACTIVITY INCLUDE THE
09:28AM 21 2013, 2014, AND 2015 TIME PERIOD?

09:28AM 22 A. YES.

09:28AM 23 Q. AND WHAT TYPES OF INFORMATION WOULD MR. BALWANI REQUEST
09:28AM 24 FROM YOU FROM TIME TO TIME?

09:28AM 25 A. SO ON A WEEKLY BASIS I WOULD SEND THE WEEKLY CASH POSITION

09:29AM 1 OR ACTIVITIES TO MR. BALWANI AND MS. HOLMES ON A WEEKLY BASIS,
09:29AM 2 AND SOMETIMES HE WOULD ASK ME FOR THE BALANCE SHEET AND INCOME
09:29AM 3 STATEMENTS.

09:29AM 4 Q. WHEN YOU JOINED THERANOS IN 2006, DID THERANOS HAVE AN
09:29AM 5 OUTSIDE AUDITOR?

09:29AM 6 A. YES.

09:29AM 7 Q. AND WHO WAS THE OUTSIDE AUDITOR WHEN YOU JOINED IN 2006?

09:29AM 8 A. ERNST & YOUNG.

09:29AM 9 Q. I'M SORRY. ERNST & YOUNG?

09:29AM 10 A. YES.

09:29AM 11 Q. ARE THEY A COMPETITOR OF DELOITTE?

09:29AM 12 A. YES.

09:29AM 13 Q. AND WHAT WAS THE ROLE OF ERNST & YOUNG AS THE OUTSIDE
09:29AM 14 AUDITOR OF THERANOS IN THE 2006 TIME PERIOD?

09:29AM 15 A. SO THEY EXAMINED THE BOOKS AND RECORDS OF THERANOS TO MAKE
09:29AM 16 SURE THAT THAT -- THAT THE FINANCIAL STATEMENT WE PRESENTED ARE
09:29AM 17 FAIRLY STATED.

09:29AM 18 Q. SO ERNST & YOUNG WAS PREPARING A -- PLAYING A ROLE FOR
09:30AM 19 THERANOS MUCH LIKE YOU HAD PLAYED AT DELOITTE FOR OTHER
09:30AM 20 COMPANIES?

09:30AM 21 A. CORRECT.

09:30AM 22 Q. AND DID ERNST & YOUNG GIVE AN OPINION ON THERANOS'S
09:30AM 23 FINANCIAL STATEMENT FOR THE PERIOD OF 2006?

09:30AM 24 A. YES.

09:30AM 25 Q. AND DID IT GIVE AN OPINION ON THERANOS'S FINANCIAL

09:30AM 1 STATEMENT FOR 2007?

09:30AM 2 A. YES.

09:30AM 3 Q. HOW ABOUT 2008?

09:30AM 4 A. YES.

09:30AM 5 Q. AND WHEN I SAY "GIVE AN OPINION ON THE FINANCIAL
09:30AM 6 STATEMENTS," WHAT DOES THAT MEAN?

09:30AM 7 A. IT MEANS THAT THEY STATED THAT THEY REVIEWED THE BOOKS AND
09:30AM 8 RECORDS OF THERANOS AND, IN THEIR OPINION, THAT THE BOOKS AND
09:30AM 9 RECORDS ARE FAIRLY STATED.

09:30AM 10 MR. LEACH: MAY I APPROACH, YOUR HONOR?

09:30AM 11 THE COURT: YES.

09:31AM 12 MR. LEACH: (HANDING.)

09:31AM 13 Q. MS. SPIVEY, I'VE PLACED BEFORE YOU A BINDER OF DOCUMENTS,
09:31AM 14 AND IF I COULD PLEASE ASK YOU TO TURN TO THE DOCUMENT AT
09:31AM 15 EXHIBIT 5797.

09:31AM 16 YOUR HONOR, THIS SHOULD BE VOLUME 2.

09:31AM 17 A. ALL RIGHT.

09:31AM 18 Q. AND ARE YOU ON TAB 5797?

09:31AM 19 A. YES.

09:31AM 20 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

09:31AM 21 A. YES.

09:31AM 22 Q. AND WHAT IS THIS?

09:31AM 23 A. THAT'S AUDIT REPORTS FROM ERNST & YOUNG.

09:31AM 24 Q. AND DOES THIS INCLUDE FINANCIAL STATEMENTS FROM THERANOS
09:31AM 25 FOR THE TIME PERIOD REFERENCED IN THE DOCUMENT?

09:31AM 1 A. YES.

09:31AM 2 Q. AND WAS THIS PREPARED IN THE ORDINARY COURSE OF THERANOS'S

09:31AM 3 BUSINESS?

09:31AM 4 A. YES.

09:31AM 5 Q. WAS IT PREPARED AT OR FROM INFORMATION BY PEOPLE WITH

09:31AM 6 KNOWLEDGE AT THE TIME?

09:32AM 7 A. YES.

09:32AM 8 Q. AND WAS THIS KEPT IN THE ORDINARY COURSE OF BUSINESS?

09:32AM 9 A. YES.

09:32AM 10 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

09:32AM 11 EXHIBIT 5797.

09:32AM 12 MR. COOPERSMITH: OBJECTION, YOUR HONOR. HEARSAY.

09:32AM 13 IT'S AN OUTSIDE DOCUMENT, NOT A DOCUMENT OF THERANOS.

09:32AM 14 AND ALSO THE DATE IS BEFORE THE CHARGED CONDUCT.

09:32AM 15 MR. LEACH: I BELIEVE IT SATISFIES THE ELEMENTS OF

09:32AM 16 THE BUSINESS RECORDS EXCEPTION, AND ITS RELEVANCE IS COMPARED

09:32AM 17 TO FUTURE PERIODS, YOUR HONOR.

09:32AM 18 IT ALSO DOES COVER PERIODS OF MR. BALWANI'S EMPLOYMENT.

09:32AM 19 THE COURT: THIS IS FROM PAGES 164 TO 188?

09:32AM 20 MR. LEACH: YES, YOUR HONOR.

09:32AM 21 THE COURT: ALL RIGHT. THANK YOU. I'LL OVERRULE

09:32AM 22 THE OBJECTION.

09:32AM 23 THIS IS ADMITTED PURSUANT TO 803(6).

09:32AM 24 (GOVERNMENT'S EXHIBIT 5797 WAS RECEIVED IN EVIDENCE.)

09:32AM 25 MR. LEACH: MAY WE DISPLAY, YOUR HONOR?

09:32AM 1 THE COURT: YES, YOU MAY PUBLISH.

09:32AM 2 MR. LEACH: THANK YOU.

09:32AM 3 Q. MS. SPIVEY, I WANT TO DRAW YOUR ATTENTION TO PAGE 1 OF
09:32AM 4 THIS DOCUMENT.

09:32AM 5 DO YOU SEE AT THE BOTTOM WHERE IT SAYS CONSOLIDATED
09:33AM 6 FINANCIAL STATEMENTS?

09:33AM 7 A. YES.

09:33AM 8 Q. OKAY. AND DO YOU SEE THE TITLE THERANOS INC. YEARS ENDED
09:33AM 9 DECEMBER 31ST, 2008 AND 2007 WITH REPORT OF INDEPENDENT
09:33AM 10 AUDITORS?

09:33AM 11 A. YES.

09:33AM 12 Q. AND THE REPORT OF INDEPENDENT AUDITORS, IS THAT
09:33AM 13 ERNST & YOUNG?

09:33AM 14 A. YES.

09:33AM 15 Q. OKAY. LET'S LOOK AT PAGE 2.

09:33AM 16 IS THIS THE TABLE OF CONTENTS FOR THE CONSOLIDATED
09:33AM 17 FINANCIAL STATEMENTS?

09:33AM 18 A. YES.

09:33AM 19 Q. OKAY. ON PAGE 1 IT SAYS, REPORT OF INDEPENDENT AUDITORS.
09:33AM 20 DO YOU SEE THAT?

09:33AM 21 A. YES.

09:33AM 22 Q. AND IS THAT A REFERENCE TO THE REPORT THAT ERNST & YOUNG
09:33AM 23 PREPARES BASED ON ITS AUDIT?

09:33AM 24 A. YES.

09:33AM 25 Q. AND THEN FURTHER BELOW THERE'S SOMETHING CALLED

09:33AM 1 CONSOLIDATED BALANCE SHEETS, CONSOLIDATED STATEMENTS OF
09:33AM 2 OPERATIONS.

09:33AM 3 DO YOU SEE THAT?

09:33AM 4 A. YES.

09:33AM 5 Q. THE BALANCE SHEET, IS THAT ONE OF THE CORE FINANCIAL
09:34AM 6 STATEMENTS OF THERANOS?

09:34AM 7 A. YES.

09:34AM 8 Q. AND CONSOLIDATED STATEMENTS OF OPERATIONS, WHAT DOES THAT
09:34AM 9 MEAN?

09:34AM 10 A. THAT'S THE SAME AS THE INCOME STATEMENTS.

09:34AM 11 Q. THAT'S THE SAME AS THE INCOME STATEMENT?

09:34AM 12 A. YES.

09:34AM 13 Q. AND DOES THE INCOME STATEMENT HAVE ANY OTHER NAMES?

09:34AM 14 A. STATEMENT OF PROFIT AND LOSS.

09:34AM 15 Q. OKAY. SO IF THERE'S A REFERENCE TO STATEMENTS OF
09:34AM 16 OPERATION OR INCOME STATEMENT OR PROFIT AND LOSS STATEMENT,
09:34AM 17 THAT'S ESSENTIALLY THE SAME THING?

09:34AM 18 A. YES.

09:34AM 19 Q. AND THAT'S A SNAPSHOT OF THE COMPANY'S PERFORMANCE OVER A
09:34AM 20 PERIOD OF TIME?

09:34AM 21 A. YES.

09:34AM 22 Q. OKAY. LET ME DRAW YOUR ATTENTION TO PAGE 3 OF THE
09:34AM 23 EXHIBIT.

09:34AM 24 DO YOU SEE THE HEADING AT THE TOP REPORT OF INDEPENDENT
09:34AM 25 AUDITORS?

09:34AM 1

A. YES.

09:34AM 2

Q. AND DO YOU SEE THAT THIS IS DIRECTED TO THE BOARD OF

09:34AM 3

DIRECTORS AND STOCKHOLDERS, THERANOS INC.?

09:34AM 4

A. YES.

09:34AM 5

Q. AND THIS SAYS IN THE FIRST PARAGRAPH, "WE HAVE AUDITED THE

09:35AM 6

ACCOMPANYING CONSOLIDATED BALANCE SHEETS OF THERANOS INC. AS OF

09:35AM 7

DECEMBER 31, 2008 AND 2007 AND THE RELATED CONSOLIDATED

09:35AM 8

STATEMENTS OF OPERATIONS, STOCKHOLDERS EQUITY, AND CASH FLOWS

09:35AM 9

FOR THE YEARS THEN ENDED."

09:35AM 10

DO YOU SEE THAT?

09:35AM 11

A. YES.

09:35AM 12

Q. AND PRIOR TO RECEIVING THIS, DID YOU WORK WITH

09:35AM 13

ERNST & YOUNG IN CONNECTION WITH THEIR AUDIT?

09:35AM 14

A. YES.

09:35AM 15

Q. THE SECOND SENTENCE SAYS, "THESE CONSOLIDATED FINANCIAL

09:35AM 16

STATEMENTS ARE THE RESPONSIBILITY OF THE COMPANY'S MANAGEMENT."

09:35AM 17

DO YOU SEE THAT?

09:35AM 18

A. YES.

09:35AM 19

Q. AND WHAT DOES THAT MEAN?

09:35AM 20

A. THAT MEANS THAT WE PREPARE THOSE FINANCIAL STATEMENTS.

09:35AM 21

Q. WE AS OPPOSED TO SOMEBODY ELSE?

09:35AM 22

A. WE AS OPPOSED TO ERNST & YOUNG.

09:35AM 23

Q. SO MANAGEMENT PREPARES THE FINANCIAL STATEMENTS AND THE

09:35AM 24

AUDITOR GIVES THE OPINION?

09:36AM 25

A. CORRECT.

09:36AM 1 Q. OKAY. AND IS THAT WHAT IS EXPRESSED IN THE NEXT SENTENCE,
09:36AM 2 "OUR RESPONSIBILITY IS TO EXPRESS AN OPINION ON THESE
09:36AM 3 CONSOLIDATED FINANCIAL STATEMENTS BASED ON OUR AUDITS."

09:36AM 4 IS THAT GETTING AT THAT CONCEPT?

09:36AM 5 A. YES.

09:36AM 6 Q. OKAY. I'VE TALKED A LITTLE BIT ABOUT THE BALANCE SHEET
09:36AM 7 AND THE STATEMENT OF OPERATIONS.

09:36AM 8 WHAT IS THE STATEMENT OF STOCKHOLDERS' EQUITY?

09:36AM 9 A. THAT SHOWS THE -- ON A HIGH LEVEL, THAT SHOWS THE
09:36AM 10 INVESTMENTS THAT THE COMPANY, OR THE FUND THAT -- THE INVESTING
09:36AM 11 FUND THAT THE COMPANY RECEIVED FROM INVESTORS AND RESULTS OF
09:36AM 12 THE COMPANY OVER THE COURSE OF -- SINCE THE COMPANY'S
09:36AM 13 INCEPTION.

09:36AM 14 Q. I ALSO DIDN'T ASK ABOUT THE STATEMENT -- CONSOLIDATED
09:37AM 15 STATEMENTS OF CASH FLOWS.

09:37AM 16 WHAT IS THAT DOCUMENT?

09:37AM 17 A. IT SHOWS THE CASH ACTIVITIES OF THE COMPANY FOR THE PERIOD
09:37AM 18 OF TIME.

09:37AM 19 Q. OKAY. GOING BACK TO THE REPORT OF INDEPENDENT AUDITORS,
09:37AM 20 IT SAYS IN THE SECOND PARAGRAPH, "WE CONDUCTED OUR AUDITS IN
09:37AM 21 ACCORDANCE WITH AUDITING STANDARDS GENERALLY ACCEPTED IN THE
09:37AM 22 UNITED STATES."

09:37AM 23 DO YOU SEE THAT LANGUAGE?

09:37AM 24 A. YES.

09:37AM 25 Q. AND IS THAT YOUR UNDERSTANDING OF WHAT ERNST & YOUNG DID?

09:37AM 1

A. YES.

09:37AM 2

Q. AND THEN DOWN AT THE BOTTOM IN THE THIRD PARAGRAPH IT SAYS, "IN OUR OPINION, THE FINANCIAL STATEMENTS REFERRED TO ABOVE PRESENT FAIRLY, IN ALL MATERIAL RESPECTS, THE CONSOLIDATED FINANCIAL POSITION OF THERANOS AT DECEMBER 31, 2008, AND 2007," AND THEN IT CONTINUES.

09:37AM 7

DO YOU SEE THAT?

09:37AM 8

A. YES.

09:37AM 9

Q. AND IS THAT ESSENTIALLY THE OPINION THAT ERNST & YOUNG RENDERED ON THE FINANCIAL STATEMENTS?

09:37AM 10

A. YES.

09:37AM 11

09:37AM 12

Q. AND IS THAT IMPORTANT TO A COMPANY LIKE THERANOS?

09:38AM 13

A. YES.

09:38AM 14

Q. HOW SO?

09:38AM 15

A. SO IT SHOWS THAT THE COMPANY -- THE RECORDS THAT THE COMPANY MAINTAINED ARE FAIRLY STATED, AND THEY GIVE CREDIBILITY TO WHAT WE PRESENTED.

09:38AM 16

09:38AM 17

09:38AM 18

Q. AND WHEN YOU SAY IT BRINGS CREDIBILITY TO WHAT YOU PRESENTED, WHAT DO YOU MEAN BY THAT?

09:38AM 19

09:38AM 20

A. SO IT SHOWS OTHER PEOPLE THAT THE NUMBERS ARE ACCURATE, IT'S NOT A MADE UP NUMBER.

09:38AM 21

09:38AM 22

Q. SO YOU CAN HOLD THIS OUT TO OTHERS SAYING IT'S NOT JUST US SAYING THIS, WE HAVE AN AUDITOR WHO HAS LOOKED AT THIS?

09:38AM 23

09:38AM 24

A. CORRECT.

09:38AM 25

Q. OKAY. THERE'S A SIGNATURE, ERNST & YOUNG LLP.

09:38AM 1 DO YOU SEE THAT?

09:38AM 2 A. YES.

09:38AM 3 Q. AND BELOW THE SIGNATURE THERE'S A DATE, JUNE 26TH, 2009,
09:38AM 4 EXCEPT FOR NOTE 13, AS TO WHICH THE DATE IS SEPTEMBER 9TH,
09:38AM 5 2009.

09:38AM 6 DO YOU SEE THAT?

09:38AM 7 A. YES.

09:38AM 8 Q. AND WHAT IS YOUR UNDERSTANDING AS TO WHAT THAT DATE REFERS
09:39AM 9 TO?

09:39AM 10 A. THAT'S THE DATE -- SO JUNE 26TH, 2009, WAS THE DATE THAT
09:39AM 11 THEY SIGNED THE REPORT. SO THEY REVIEWED THE RECORDS UP TO
09:39AM 12 THAT DATE.

09:39AM 13 Q. OKAY. THIS IS A REPORT FOR THE YEARS 2008 AND 2007; IS
09:39AM 14 THAT CORRECT?

09:39AM 15 A. CORRECT.

09:39AM 16 Q. OKAY. DID ERNST & YOUNG PREPARE A REPORT OF INDEPENDENT
09:39AM 17 AUDITORS IN LATER YEARS?

09:39AM 18 A. NO.

09:39AM 19 Q. OKAY. DID IT PREPARE ONE IN 2009?

09:39AM 20 A. NO.

09:39AM 21 Q. DID IT PREPARE ONE IN 2010?

09:39AM 22 A. NO.

09:39AM 23 Q. DID IT PREPARE ONE IN ANY YEAR GOING FORWARD?

09:39AM 24 A. NO.

09:39AM 25 Q. OKAY. AT SOME POINT IN TIME DID THERANOS ENGAGE WITH A

09:39AM 1 DIFFERENT ACCOUNTING FIRM?

09:39AM 2 A. YES.

09:39AM 3 Q. AND TELL US ABOUT THAT, PLEASE.

09:39AM 4 A. WE USED KPMG FOR 2009 AND ONWARD.

09:39AM 5 Q. OKAY. AND IS KPMG A COMPETITOR OF DELOITTE AND

09:39AM 6 ERNST & YOUNG?

09:39AM 7 A. YES.

09:39AM 8 Q. IN THE ACCOUNTING WORLD, ARE THEY LUMPED AS A GROUP WITH

09:40AM 9 OTHER ACCOUNTING FIRMS?

09:40AM 10 A. SO THERE ARE -- THEY ARE THREE OF THE BIG FOUR FIRMS.

09:40AM 11 Q. OKAY. AND SO THERE'S A FOURTH THAT WE HAVEN'T TALKED

09:40AM 12 ABOUT?

09:40AM 13 A. RIGHT.

09:40AM 14 Q. OKAY. AND DURING THE TIME PERIOD 2009 THROUGH 2015, DID

09:40AM 15 YOU WORK WITH AUDITORS FROM KPMG?

09:40AM 16 A. YES.

09:40AM 17 Q. AND DESCRIBE FOR US YOUR INTERACTION WITH THE AUDITORS

09:40AM 18 FROM KPMG AT A HIGH LEVEL.

09:40AM 19 A. RIGHT. SO I WOULD PROVIDE THE COMPANY, AND IT'S SIMILAR

09:40AM 20 TO WHAT WE DID WITH ERNST & YOUNG, WE PROVIDE OUR FINANCIAL

09:40AM 21 DATA AND RECORDS TO KPMG AND THEY WILL REVIEW THE DATA AND

09:40AM 22 AUDIT THEM, AND THE GOAL OF THAT WAS ALSO TO RENDER OPINIONS AS

09:40AM 23 TO WHETHER THE FINANCIAL STATEMENTS ARE FAIRLY STATED.

09:40AM 24 Q. SO THERANOS HIRED KPMG WITH THE GOAL OF RENDERING AN

09:41AM 25 OPINION, LIKE THE ONE WE SEE FROM ERNST & YOUNG FOR FUTURE

09:41AM 1

PERIODS?

09:41AM 2

A. YES.

09:41AM 3

Q. OKAY. DID KPMG EVER RENDER AN OPINION ON THERANOS'S 2009

09:41AM 4

STATEMENTS?

09:41AM 5

A. NO.

09:41AM 6

Q. DID IT EVER RENDER AN OPINION ON THERANOS'S 2010 FINANCIAL

09:41AM 7

STATEMENTS?

09:41AM 8

A. NO.

09:41AM 9

Q. WHY DID KPMG NOT RENDER AN OPINION ON THERANOS'S 2009 AND

09:41AM 10

2010 FINANCIAL STATEMENTS?

09:41AM 11

A. SO FOR 2009, THEY FINISHED THEIR FIELD WORK, MEANING THEY

09:41AM 12

REVIEWED THE FINANCIAL DATA, THE RECORDS OF THERANOS.

09:41AM 13

BUT BECAUSE THAT WAS ALREADY TOWARDS THE END OF 2010, AND

09:41AM 14

THEY SAID THEY WOULD DO THE AUDIT FOR 2010 AND THEN ISSUE ONE

09:41AM 15

REPORT FOR 2009 AND 2010, JUST LIKE ERNST & YOUNG DID FOR 2008

09:41AM 16

AND '07.

09:42AM 17

SO WE'RE JUST HOLDING UP AND WAITING FOR THE 2010 AUDIT TO

09:42AM 18

COMPLETE, BUT THERE WERE SOME ISSUES WITH THE 2010 AUDIT AND

09:42AM 19

THEY COULDN'T ISSUE THE REPORT.

09:42AM 20

Q. AND WHAT WAS THE ISSUE IN 2010 THAT HELD UP ISSUANCE OF AN

09:42AM 21

OPINION BY KPMG?

09:42AM 22

A. IT WAS RELATED TO OPTION VALUATION.

09:42AM 23

Q. OKAY. WHEN YOU SAY IT WAS RELATED TO OPTION VALUATION,

09:42AM 24

CAN YOU DESCRIBE THE ISSUE FOR US, PLEASE?

09:42AM 25

A. YES. SO THE COMPANY GRANTED AN OPTION IN MAY AND

09:42AM 1 JUNE 2010 AT A PRICE THAT WAS LOWER THAN WHAT KPMG THOUGHT
09:42AM 2 SHOULD BE THE FAIR VALUE.

09:42AM 3 Q. AND WHEN YOU SAY THE COMPANY GRANTED AN OPTION IN 2010,
09:42AM 4 WHAT DO YOU MEAN? WHAT IS AN OPTION AND WHAT WAS THE
09:42AM 5 TRANSACTION?

09:42AM 6 A. OKAY. AN OPTION -- SEE, WHEN THE COMPANY GRANT AN OPTION
09:43AM 7 TO THE OPTIONEE, THEN THE OPTIONEE HAS THE RIGHT TO PURCHASE
09:43AM 8 THE COMPANY STOCK AT A PRE-DETERMINED PRICE AT A FUTURE DATE.

09:43AM 9 Q. OKAY. AND YOU SAID SOMETHING ABOUT THE OPTION WAS GRANTED
09:43AM 10 AT A PRICE LOWER THAN KPMG THOUGHT WAS APPROPRIATE?

09:43AM 11 A. YES.

09:43AM 12 Q. OKAY. AND WHO WAS THE OPTIONEE? WHO WAS THE OPTION GIVEN
09:43AM 13 TO?

09:43AM 14 A. IN MAY IT WAS GIVEN TO ELIZABETH HOLMES, AND THEN IN JUNE
09:43AM 15 IT WAS GIVEN TO A LIST OF EMPLOYEES.

09:43AM 16 Q. OKAY. DID THAT LIST OF EMPLOYEES INCLUDE MR. BALWANI?

09:43AM 17 A. I DO NOT BELIEVE SO.

09:43AM 18 Q. OKAY. WE'LL COME BACK TO THAT POINT.

09:43AM 19 BUT WHY WAS THAT AN ISSUE? WHY IF THE COMPANY HAD GRANTED
09:43AM 20 OPTIONS AT A PRICE LOWER THAN KPMG THOUGHT WAS APPROPRIATE, WHY
09:43AM 21 WAS THAT AN ISSUE?

09:43AM 22 MR. COOPERSMITH: YOUR HONOR, OBJECTION. RELEVANCE.

09:44AM 23 THE COURT: OVERRULED.

09:44AM 24 THE WITNESS: SO THAT WOULD HAVE SOME TAX
09:44AM 25 CONSEQUENCES FOR THE COMPANY, AS WELL AS FOR THE OPTIONEE.

09:44AM 1 BY MR. LEACH:

09:44AM 2 Q. AND DID THE ISSUE OF THE OPTIONS BEING GRANTED AT A PRICE

09:44AM 3 LOWER THAN KPMG THOUGHT, DID THAT ISSUE EVER GET RESOLVED?

09:44AM 4 A. NO.

09:44AM 5 Q. OKAY. DID KPMG EVER RENDER AN OPINION ON THERANOS'S

09:44AM 6 FINANCIAL STATEMENTS IN 2011?

09:44AM 7 A. NO.

09:44AM 8 Q. DID IT EVER RENDER AN OPINION IN 2012?

09:44AM 9 A. NO.

09:44AM 10 Q. DID IT RENDER AN OPINION IN 2013?

09:44AM 11 A. NO.

09:44AM 12 Q. DID IT RENDER AN OPINION IN 2014?

09:44AM 13 A. NO.

09:44AM 14 Q. DID IT RENDER AN OPINION IN 2015?

09:44AM 15 A. NO.

09:44AM 16 Q. OKAY. DID YOU FIND IT UNUSUAL THAT THERANOS DID NOT HAVE

09:44AM 17 AUDITED FINANCIAL STATEMENTS AFTER 2008?

09:44AM 18 MR. COOPERSMITH: OBJECTION. LEADING.

09:44AM 19 THE COURT: DO YOU WANT TO REPHRASE THE QUESTION?

09:44AM 20 BY MR. LEACH:

09:44AM 21 Q. HOW DID YOU FEEL ABOUT THERANOS NOT HAVING AUDITED

09:45AM 22 FINANCIAL STATEMENTS? HOW DID THAT COMFORT WITH YOUR

09:45AM 23 EXPERIENCE?

09:45AM 24 MR. COOPERSMITH: OBJECTION. RELEVANCE.

09:45AM 25 THE COURT: OVERRULED.

09:45AM 1 YOU CAN ANSWER THE QUESTION.

09:45AM 2 THE WITNESS: FROM MY EXPERIENCE FOR PRIVATE

09:45AM 3 COMPANY, THE COMPANY USUALLY HAVE FINANCIAL STATEMENTS ONCE A

09:45AM 4 YEAR.

09:45AM 5 BY MR. LEACH:

09:45AM 6 Q. OKAY. AUDITED FINANCIAL STATEMENTS?

09:45AM 7 A. AUDITED FINANCIAL STATEMENTS.

09:45AM 8 Q. OKAY. AND DID THAT -- YOUR EXPERIENCE WITH THERANOS

09:45AM 9 DIFFERED WITH YOUR EXPERIENCE WITH OTHER COMPANIES.

09:45AM 10 IS THAT FAIR?

09:45AM 11 A. YES.

09:45AM 12 Q. AND DID YOU FIND IT ODD THAT THERANOS DID NOT HAVE AUDITED

09:45AM 13 FINANCIAL STATEMENTS?

09:45AM 14 MR. COOPERSMITH: OBJECTION. LEADING.

09:45AM 15 BY MR. LEACH:

09:45AM 16 Q. AT THE TIME, HOW DID YOU FEEL ABOUT THE FACT THAT THERANOS

09:45AM 17 LACKED AUDITED FINANCIAL STATEMENTS?

09:45AM 18 A. AS A CONTROLLER, IT WAS PART OF MY RESPONSIBILITY TO HELP

09:46AM 19 THE COMPANY, ASSIST THE COMPANY TO GET THE ISSUE -- YOU KNOW,

09:46AM 20 TO ISSUE THE AUDITED FINANCIAL STATEMENT. SO WE REALLY

09:46AM 21 WANTED -- I REALLY WANTED TO WORK WITH THE AUDITOR TO RESOLVE

09:46AM 22 THOSE ISSUES.

09:46AM 23 Q. SO YOU WERE DOING YOUR BEST TO WORK WITH THE AUDITORS TO

09:46AM 24 TRY TO GET THESE AUDITED FINANCIAL STATEMENTS?

09:46AM 25 A. CORRECT.

09:46AM 1 Q. OKAY. LET'S GO BACK TO THE RECORD THAT WE HAVE FROM 2008
09:46AM 2 ON THE SCREEN FROM ERNST & YOUNG, AND IF WE CAN PLEASE GO TO
09:46AM 3 PAGE 4.

09:46AM 4 DO YOU SEE THE HEADING CONSOLIDATED BALANCE SHEETS,
09:46AM 5 MS. SPIVEY?

09:46AM 6 A. YES.

09:46AM 7 Q. AND IN THE LEFT COLUMN THERE'S A ROW IN BOLD, ASSETS.
09:46AM 8 DO YOU SEE THAT?

09:46AM 9 A. YES.

09:46AM 10 Q. AND FURTHER DOWN THERE'S A ROW IN BOLD, LIABILITIES AND
09:47AM 11 STOCKHOLDERS' EQUITY.

09:47AM 12 DO YOU SEE THAT?

09:47AM 13 A. YES.

09:47AM 14 Q. AND IS THAT WHAT YOU MEAN WHEN YOU SAY THE BALANCE SHEET
09:47AM 15 CAPTURES ASSETS AND LIABILITIES AS OF A PARTICULAR DATE?

09:47AM 16 A. YES.

09:47AM 17 Q. OKAY. I WANT TO DRAW YOUR ATTENTION TO A ROW IN THE
09:47AM 18 STOCKHOLDERS' EQUITY SECTION WHERE IT SAYS ACCUMULATED DEFICIT.

09:47AM 19 DO YOU SEE THAT?

09:47AM 20 A. YES.

09:47AM 21 Q. AND WHAT IS THE ACCUMULATED DEFICIT?

09:47AM 22 A. THAT'S THE ACCUMULATED LOSSES THAT THE COMPANY INCURRED
09:47AM 23 SINCE THE INCEPTION OF THE COMPANY.

09:47AM 24 Q. THE ACCUMULATED LOSSES THAT THE COMPANY HAS INCURRED SINCE
09:47AM 25 THE INCEPTION OF THE COMPANY? DID I HEAR THAT RIGHT?

09:47AM 1 A. YES.

09:47AM 2 Q. OKAY. AND SO -- AND THERE'S A NUMBER IN THE COLUMN 2008,

09:47AM 3 NEGATIVE 48,183,282.

09:47AM 4 DO YOU SEE THAT?

09:47AM 5 A. YES.

09:47AM 6 Q. AND WHAT DOES THAT NUMBER REPRESENT?

09:48AM 7 A. THAT'S ALL OF THE LOSSES THAT THE COMPANY INCURRED UP TO

09:48AM 8 2008.

09:48AM 9 Q. OKAY. LET ME DRAW YOUR ATTENTION TO THE NEXT PAGE,

09:48AM 10 PAGE 5.

09:48AM 11 DO YOU SEE THE HEADING CONSOLIDATED STATEMENTS OF

09:48AM 12 OPERATIONS?

09:48AM 13 A. YES.

09:48AM 14 Q. AND IS THAT ANOTHER NAME FOR THE INCOME STATEMENT?

09:48AM 15 A. YES.

09:48AM 16 Q. ALSO CALLED THE PROFIT AND LOSS STATEMENT?

09:48AM 17 A. YES.

09:48AM 18 Q. AND TO THE LEFT THERE'S A HEADING REVENUE.

09:48AM 19 DO YOU SEE THAT?

09:48AM 20 A. YES.

09:48AM 21 Q. AND WHAT IS REVENUE?

09:48AM 22 A. THAT'S THE MONEY THAT THE COMPANY RECEIVED FOR PROVIDING

09:48AM 23 SERVICES.

09:48AM 24 Q. WHEN YOU SAY, "THE MONEY THAT THE COMPANY RECEIVED FOR

09:48AM 25 PROVIDING SERVICES," HOW DOES THAT DIFFER FOR SOMETHING LIKE

09:48AM 1 CASH?

09:48AM 2 A. CASH IS, CASH IS MONEY IN YOUR POCKET.

09:49AM 3 Q. OKAY.

09:49AM 4 A. REVENUE IS SOMETHING THAT YOU HAVE TO EARN.

09:49AM 5 Q. REVENUE IS SOMETHING THAT YOU HAVE TO EARN?

09:49AM 6 A. YES.

09:49AM 7 Q. AND WHAT DO YOU MEAN BY THAT?

09:49AM 8 A. THAT YOU HAVE TO PROVIDE EITHER SERVICES OR YOU'RE SELLING

09:49AM 9 SOMETHING.

09:49AM 10 Q. OKAY. BENEATH THAT THERE'S A LINE FOR OPERATING EXPENSES.

09:49AM 11 DO YOU SEE THAT?

09:49AM 12 A. YES.

09:49AM 13 Q. WHAT ARE OPERATING EXPENSES?

09:49AM 14 A. THAT'S THE EXPENSES THAT THE COMPANY INCURRED FOR THE

09:49AM 15 BUSINESS.

09:49AM 16 Q. OKAY. AND THEN FURTHER DOWN THERE'S A LINE FOR OPERATING

09:49AM 17 LOSS.

09:49AM 18 WHAT IS THE OPERATING LOSS?

09:49AM 19 A. THAT'S THE LOSS FROM OPERATION.

09:49AM 20 Q. OKAY. AND HOW DOES THE OPERATING LOSS RELATE TO THE

09:49AM 21 REVENUE AND THE OPERATING EXPENSES?

09:49AM 22 A. SO IF YOU INCUR MORE EXPENSES THAN THE REVENUE THAT YOU

09:50AM 23 RECEIVED, THEN YOU INCURRED AN OPERATING LOSS.

09:50AM 24 Q. IS THE OPERATING LOSS THE DIFFERENCE BETWEEN OPERATING

09:50AM 25 REVENUE AND EXPENSES?

09:50AM 1 A. YES.

09:50AM 2 Q. AND DOWN AT THE BOTTOM THERE'S SOMETHING CALLED NET LOSS.

09:50AM 3 DO YOU SEE THAT?

09:50AM 4 A. YES.

09:50AM 5 Q. AND WHAT IS NET LOSS?

09:50AM 6 A. IT'S THE OPERATING LOSS AFTER SUBTRACTING OR ADDING OTHER

09:50AM 7 INCOME OR EXPENSES.

09:50AM 8 Q. OKAY. SO SOME EXPENSES DIFFER FROM THE OPERATING

09:50AM 9 EXPENSES?

09:50AM 10 A. RIGHT.

09:50AM 11 Q. OKAY. AND IF WE LOOK AT THE DIFFERENT COLUMNS, TO THE

09:50AM 12 RIGHT THERE'S ONE MORE IN THE YEAR 2007.

09:50AM 13 DO YOU SEE THAT?

09:50AM 14 A. YES.

09:50AM 15 Q. AND THERE'S A LINE THERE, OR A HYPHEN.

09:50AM 16 DO YOU SEE THAT?

09:50AM 17 A. YES.

09:50AM 18 Q. AND WHAT DOES THAT MEAN?

09:50AM 19 A. THAT MEANS THAT THERE WAS NO REVENUE FOR 2007.

09:50AM 20 Q. OKAY. SO IS THE OPERATING LOSS -- AND THEN THERE'S AN

09:50AM 21 ENTRY OF 17,399,923 FOR OPERATING LOSS.

09:50AM 22 DO YOU SEE THAT?

09:50AM 23 A. YES.

09:50AM 24 Q. AND IS THAT THE DIFFERENCE BETWEEN THE REVENUE, WHICH IS

09:51AM 25 ZERO, AND THE OPERATING EXPENSES?

09:51AM 1 A. YES.

09:51AM 2 Q. FURTHER DOWN BELOW THERE'S A NUMBER \$16,270,872.

09:51AM 3 DO YOU SEE THAT?

09:51AM 4 A. YES.

09:51AM 5 Q. AND WAS THAT THE NET LOSS FOR 2007?

09:51AM 6 A. YES.

09:51AM 7 Q. AND MOVING TO THE LEFT, THERE'S AN ENTRY FOR 2008 IN THE

09:51AM 8 REVENUE ROW, 1,798,974.

09:51AM 9 DO YOU SEE THAT?

09:51AM 10 A. YES.

09:51AM 11 Q. AND WHAT DOES THAT REPRESENT?

09:51AM 12 A. THAT REPRESENTS THE MONEY THAT THE COMPANY EARNED FOR

09:51AM 13 PROVIDING SERVICES.

09:51AM 14 Q. OKAY. AND IN THAT 2008 TIME PERIOD, WHERE DID THAT

09:51AM 15 REVENUE COME FROM?

09:51AM 16 A. IT WAS FROM A PHARMACEUTICAL COMPANY.

09:51AM 17 Q. OKAY. AND FURTHER BELOW IN THE NET LOSS ROW THERE'S AN

09:51AM 18 ENTRY 11,293,593.

09:51AM 19 DO YOU SEE THAT?

09:51AM 20 A. YES.

09:51AM 21 Q. AND IS THAT THE NET LOSS FOR THE TIME PERIOD 2008?

09:51AM 22 A. YES.

09:52AM 23 Q. LET ME DRAW YOUR ATTENTION TO PAGE 8.

09:52AM 24 DO YOU SEE AT THE TOP WHERE IT SAYS NOTES TO CONSOLIDATED

09:52AM 25 FINANCIAL STATEMENTS, DECEMBER 31ST, 2008?

09:52AM 1

A. YES.

09:52AM 2

Q. AND WHAT ARE THE NOTES TO CONSOLIDATED FINANCIAL

09:52AM 3

STATEMENTS?

09:52AM 4

A. THAT'S, THAT'S LIKE SUPPLEMENTARY INFORMATION TO THE

09:52AM 5

FINANCIAL STATEMENTS.

09:52AM 6

Q. OKAY. AND IN NOTE 1 IT SAYS, COMPANY AND BASIS OF

09:52AM 7

PRESENTATION.

09:52AM 8

DO YOU SEE THAT?

09:52AM 9

A. YES.

09:52AM 10

Q. AND IN THAT FIRST LINE, DO YOU SEE WHERE IT SAYS,

09:52AM 11

"THERANOS INC. (THE COMPANY) WAS INCORPORATED IN DELAWARE IN

09:52AM 12

2004 AND IS DEVELOPING THE INTEGRATION OF NANO- AND

09:53AM 13

BIOTECHNOLOGIES INTO REAL-TIME INFORMATICS SYSTEMS."

09:53AM 14

DO YOU SEE THAT LANGUAGE?

09:53AM 15

A. YES.

09:53AM 16

Q. AND IN THE NEXT PARAGRAPH IT SAYS, "IN 2008, THE COMPANY

09:53AM 17

HAS GENERATED REVENUES FROM VALIDATION STUDIES AND SERVICES

09:53AM 18

PROVIDED TO THE CUSTOMERS. FOR PURPOSES OF PRESENTATION AND

09:53AM 19

DISCLOSURE, THE COMPANY WAS CONSIDERED TO BE IN THE INVESTMENT

09:53AM 20

STAGE IN 2007 AND IN PRIOR YEARS."

09:53AM 21

WHAT DOES THAT LAST LINE MEAN RELATING TO DEVELOPMENT

09:53AM 22

STAGE?

09:53AM 23

A. FROM MY UNDERSTANDING, THAT MEANT THE COMPANY HAD NO

09:53AM 24

REVENUE IN 2007 AND BEFORE BECAUSE THEY'RE IN THE DEVELOPMENT

09:53AM 25

STAGE.

09:53AM

1

Q. THANK YOU, MS. SPIVEY.

09:53AM

2

LET ME DRAW YOUR ATTENTION LAST IN THIS DOCUMENT TO

09:53AM

3

PAGE 24.

09:54AM

4

DO YOU HAVE THAT PAGE IN FRONT OF YOU?

09:54AM

5

A. YES.

09:54AM

6

Q. AND DO YOU SEE IT ON THE SCREEN?

09:54AM

7

A. YES.

09:54AM

8

Q. AND I WANT TO DRAW YOUR ATTENTION TO NOTE 13 DOWN AT THE
BOTTOM, SUBSEQUENT EVENTS.

09:54AM

9

DO YOU SEE THAT?

09:54AM

10

09:54AM

11

A. YES.

09:54AM

12

Q. THE FIRST PARAGRAPH SAYS, "IN FEBRUARY 2009, THE COMPANY
ENTERED INTO AN AGREEMENT WITH CELGENE CORPORATION TO PROVIDE
PREDICTIVE MODELING SERVICES AND TO CREATE A RELATED DATA
INFRASTRUCTURE FOR CONSIDERATION OF \$3,250,000."

09:54AM

13

09:54AM

14

09:54AM

15

09:54AM

16

DO YOU SEE THAT LANGUAGE?

09:54AM

17

A. YES.

09:54AM

18

Q. AND WAS CELGENE ONE OF THE PHARMACEUTICAL COMPANIES THAT
THERANOS WAS WORKING WITH DURING THIS TIME PERIOD?

09:54AM

19

09:54AM

20

A. YES.

09:54AM

21

Q. IT THEN SAYS, "IN AUGUST 2009, THE COMPANY ENTERED INTO A
BORROWING ARRANGEMENT UNDER WHICH THE COMPANY HAS NOW BORROWED
8 MILLION. THE BORROWING IS GUARANTEED BY AN INDIVIDUAL TO
WHOM THE COMPANY HAS ISSUED A WARRANT TO PURCHASE 200,000
SHARES OF COMMON STOCK FOR \$0.36 PER SHARE."

09:54AM

22

09:54AM

23

09:54AM

24

09:54AM

25

09:55AM 1 DO YOU SEE THAT LANGUAGE?

09:55AM 2 A. YES.

09:55AM 3 Q. AND IS IT YOUR UNDERSTANDING THAT THAT HAPPENED IN AUGUST
09:55AM 4 OF 2009?

09:55AM 5 A. YES.

09:55AM 6 Q. OKAY. DO YOU KNOW WHO THE INDIVIDUAL WHO GUARANTEED THE
09:55AM 7 BORROWED AMOUNT WAS?

09:55AM 8 A. YES. SUNNY BALWANI.

09:55AM 9 Q. OKAY. AT ANY POINT IN TIME -- THIS IS 2008. AT ANY POINT
09:55AM 10 IN TIME FORWARD BETWEEN 2009 AND 2016, DID THERANOS HAVE
09:55AM 11 AUDITED FINANCIAL STATEMENTS LIKE WE'RE LOOKING AT HERE?

09:55AM 12 A. NO.

09:55AM 13 Q. LET ME DRAW YOUR ATTENTION, MS. SPIVEY, TO THE TIME
09:55AM 14 PERIOD --

09:55AM 15 THANK YOU, MS. WACHS, YOU CAN TAKE THIS DOWN.

09:55AM 16 I WANT TO TALK ABOUT THE LEAD UP TO THE \$8 MILLION LOAN
09:55AM 17 THAT WE SAW IN THE FINANCIAL STATEMENTS THERE.

09:55AM 18 IN THE TIME PERIOD 2009, HOW WOULD YOU DESCRIBE THERANOS'S
09:55AM 19 CASH POSITION?

09:55AM 20 A. THE CASH WAS DEPLETING QUITE QUICKLY IN 2009 AND IT WAS

09:56AM 21 GETTING REALLY TIGHT, AND AS THE CONTROLLER I WAS ALWAYS

09:56AM 22 WORRIED ABOUT HOW TO PAY OUR VENDORS AND HOW TO PAY THE

09:56AM 23 EMPLOYEES, DO WE HAVE MONEY TO MAKE THE NEXT PAYROLL AND THINGS

09:56AM 24 LIKE THAT.

09:56AM 25 Q. IS THERE A PARTICULAR EXAMPLE THAT STANDS OUT IN YOUR MIND

09:56AM 1 ABOUT HOW CASH WAS TIGHT DURING THIS TIME PERIOD?

09:56AM 2 A. YES. SO IN 2009 THERE WAS ONE INCIDENT WHERE WE -- WHERE

09:56AM 3 I SUBMITTED THE PAYROLL RECORD OR THE PAYROLL TO -- FOR OUR

09:56AM 4 EMPLOYEES AND WE NEED TO HAVE FUNDS THE NEXT DAY IN ORDER TO

09:57AM 5 PAY THE EMPLOYEES, AND THEN WE FIND OUT THAT THE -- THE CHECK

09:57AM 6 THAT WE DEPOSITED WAS NOT CASHED -- WOULD NOT BE CASHED IN TIME

09:57AM 7 TO MAKE THAT PAYROLL, AND SO WE HAD TO CONTACT THE BANK AND TRY

09:57AM 8 TO HELP THEM, YOU KNOW, MAKE AN EXCEPTION FOR US TO CASH OUT

09:57AM 9 THE CHECK.

09:57AM 10 AND SO -- AND THE BANK, AT FIRST THEY REFUSED TO DO IT,

09:57AM 11 THEY REFUSED TO MAKE ANY EXCEPTION BECAUSE WE DON'T HAVE ANY

09:57AM 12 MONEY TO SUPPORT, TO SUPPORT THAT. AND SO WE HAVE -- I HAVE TO

09:57AM 13 CONTACT THE CUSTOMER THAT SENT US THE CHECK AND HAVE THE

09:57AM 14 CUSTOMER CONTACT THE BANK AND HAVE THEM VERIFY THAT THIS IS A

09:57AM 15 LEGITIMATE CHECK FOR THE BANK TO CLEAR THAT.

09:57AM 16 Q. OKAY. AND WHEN YOU SAY "WE," WAS IT JUST YOU INVOLVED IN

09:57AM 17 THIS?

09:57AM 18 A. NO. ELIZABETH HOLMES AND I WERE TOGETHER.

09:57AM 19 Q. OKAY. AND YOU WERE GOING THROUGH ALL OF THIS TO MAKE SURE

09:58AM 20 THAT THERANOS EMPLOYEES WOULD GET PAID IN 2009?

09:58AM 21 A. YES.

09:58AM 22 Q. OKAY. AND DID THE \$8 MILLION LOAN HELP ALLEVIATE SOME OF

09:58AM 23 THE CASH ISSUES IN 2009?

09:58AM 24 A. YES.

09:58AM 25 Q. AND DID THERANOS ALSO RAISE MONEY FROM INVESTORS IN 2010?

09:58AM 1 A. YES.

09:58AM 2 Q. I'D LIKE TO MOVE FORWARD IN TIME AND TALK ABOUT SOME OF

09:58AM 3 THE CASH ISSUES THAT YOU OBSERVED IN THE TIME PERIOD OF 2013.

09:58AM 4 DO YOU HAVE THAT TIME PERIOD IN MIND?

09:58AM 5 A. YES.

09:58AM 6 Q. OKAY.

09:58AM 7 MAY I APPROACH AGAIN, YOUR HONOR?

09:58AM 8 THE COURT: YES.

09:59AM 9 MR. LEACH: (HANDING.)

09:59AM 10 Q. I'VE PLACED BEFORE YOU, MS. SPIVEY, A DOCUMENT, BATES

09:59AM 11 NUMBER 5172.

09:59AM 12 DO YOU RECOGNIZE THIS?

09:59AM 13 A. YES.

09:59AM 14 Q. WHAT IS THIS DOCUMENT?

09:59AM 15 A. THAT IS A DOCUMENT THAT I PREPARED TO SHOW THE BEGINNING

09:59AM 16 OR THE WEEKLY BALANCES OF THERANOS.

10:00AM 17 Q. THE WEEKLY CASH BALANCES?

10:00AM 18 A. YES.

10:00AM 19 Q. OKAY. AND FROM TIME TO TIME, DID YOU SHARE THIS

10:00AM 20 INFORMATION WITH MS. HOLMES?

10:00AM 21 A. YES.

10:00AM 22 Q. AND DID YOU SHARE IT WITH MR. BALWANI?

10:00AM 23 A. YES.

10:00AM 24 Q. AND DID YOU PREPARE THIS IN THE ORDINARY COURSE OF

10:00AM 25 BUSINESS?

10:00AM 1

A. YES.

10:00AM 2

Q. AND DID YOU PREPARE THIS BASED ON THE BOOKS AND RECORDS OF
THERANOS AND ITS ACCOUNTING SYSTEM?

10:00AM 3

10:00AM 4

A. YES.

10:00AM 5

MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
EXHIBIT 5172.

10:00AM 6

10:00AM 7

MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:00AM 8

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:00AM 9

(GOVERNMENT'S EXHIBIT 5172 WAS RECEIVED IN EVIDENCE.)

10:00AM 10

BY MR. LEACH:

10:00AM 11

Q. AND MS. SPIVEY, IS THIS A LENGTHY SPREADSHEET THAT YOU'RE
LOOKING AT IN THE PAPER COPY?

10:00AM 12

10:00AM 13

A. YES.

10:00AM 14

Q. OKAY. WE'RE GOING TO DISPLAY THE NATIVE FILE ON THE
SCREEN, SO HOPEFULLY THAT WILL BE EASIER FOR YOU TO WORK WITH.

10:00AM 15

10:00AM 16

AND LET ME ORIENT YOU. UP IN THE TOP LEFT CORNER, IT SAYS
THERANOS INC. CASH BALANCE.

10:00AM 17

10:00AM 18

DO YOU SEE THAT IN ROWS 1 AND 2?

10:01AM 19

A. YES.

10:01AM 20

Q. AND BELOW THAT THERE ARE TWO ROWS, BEGINNING AND ENDING.

10:01AM 21

DO YOU SEE THAT?

10:01AM 22

A. YES.

10:01AM 23

Q. AND WHAT INFORMATION IS CONVEYED IN THOSE ROWS?

10:01AM 24

A. THAT'S THE BEGINNING OF THE WEEK AND ENDING DAY OF THE
WEEK.

10:01AM 25

10:01AM 1 Q. OKAY. AND IN ROWS 8 THROUGH 14 THERE ARE THE WORDS
10:01AM 2 COMERICA, FIDELITY, MORGAN STANLEY INVESTMENT, MORGAN STANLEY
10:01AM 3 LOC, COMERICA SECURED MONEY MARKET, WELLS FARGO OPERATING,
10:01AM 4 WELLS FARGO ESCROW.
10:01AM 5 DO YOU SEE THAT?
10:01AM 6 A. YES.
10:01AM 7 Q. AND WHAT IS MEANT BY COMERICA?
10:01AM 8 A. EXCUSE ME?
10:01AM 9 Q. IN LINE 8, WHAT IS MEANT BY COMERICA? WHAT IS MEANT BY
10:01AM 10 THAT?
10:01AM 11 A. OH, COMERICA IS THE NAME OF THE BANK THAT THERANOS KEPT
10:01AM 12 THE CHECKING ACCOUNT WITH.
10:01AM 13 Q. OKAY. BENEATH THAT IT SAYS FIDELITY.
10:02AM 14 WHAT DOES THAT REFER TO?
10:02AM 15 A. THAT'S AN INVESTMENT BANK FOR THERANOS.
10:02AM 16 Q. AND DID THERANOS ALSO HOLD CASH AT FIDELITY?
10:02AM 17 A. YES.
10:02AM 18 Q. IT THEN SAYS MORGAN STANLEY INVESTMENT.
10:02AM 19 WHAT DOES THAT MEAN?
10:02AM 20 A. SIMILAR TO FIDELITY, A DIFFERENT BANKING INSTITUTION.
10:02AM 21 Q. OKAY. AND THEN IT SAYS IN ROW 11 MORGAN STANLEY LOC.
10:02AM 22 WHAT DOES LOC REFER TO?
10:02AM 23 A. IT REFERS TO LETTER OF CREDIT.
10:02AM 24 Q. AND WHY IS A MORGAN STANLEY LETTER OF CREDIT SEPARATELY
10:02AM 25 LISTED ON THIS SPREADSHEET?

10:02AM 1 A. THIS IS THE FUND THAT IS RESERVED FOR THE LETTER OF CREDIT
10:02AM 2 PURPOSE.

10:02AM 3 Q. AND WHAT WAS THE PURPOSE OF THE LETTER OF CREDIT?

10:02AM 4 A. THAT IS SOMETHING THAT WE GIVE IT TO THE LANDLORD SO THAT
10:02AM 5 IF THERANOS DEFAULT ON RENT, THEN THE LANDLORD CAN TAKE THIS
10:03AM 6 LETTER OF CREDIT AND GO TO MORGAN STANLEY AND WITHDRAW THE
10:03AM 7 FUNDS.

10:03AM 8 Q. OKAY. AND IS THAT MONEY THAT YOU, AS THE CONTROLLER, FELT
10:03AM 9 THAT YOU WERE FREE TO USE ON ANY GIVEN DAY?

10:03AM 10 A. THIS MONEY IS RESERVED, SO THERANOS CANNOT USE THAT FUND.

10:03AM 11 Q. RESERVED FOR THE RENT?

10:03AM 12 A. CORRECT.

10:03AM 13 Q. OKAY. THERE'S THEN A ROW FOR COMERICA SECURED MONEY
10:03AM 14 MARKET, WELLS FARGO OPERATING, WELLS FARGO ESCROW.
10:03AM 15 CAN YOU JUST EXPLAIN WHAT THOSE ARE?

10:03AM 16 A. THOSE ARE JUST DIFFERENT ACCOUNTS, BANK ACCOUNTS THAT
10:03AM 17 THERANOS HAS.

10:03AM 18 Q. AND THEN IN ROW 16, WHICH IS HIGHLIGHTED, IT SAYS, TOTAL
10:03AM 19 CASH BALANCE.
10:03AM 20 DO YOU SEE THAT?

10:03AM 21 A. YES.

10:03AM 22 Q. AND IF WE MOVE TO THE RIGHT COLUMN, THERE'S THE NUMBER
10:03AM 23 \$36,383,745.
10:04AM 24 DO YOU SEE THAT?

10:04AM 25 A. YES.

10:04AM 1 Q. AND IS THAT THE SUM OF THE AMOUNTS IN THE COMERICA,
10:04AM 2 FIDELITY, WELLS FARGO AND MORGAN STANLEY ACCOUNTS?
10:04AM 3 A. YES.
10:04AM 4 Q. AND FURTHER DOWN THERE'S A BOLDED LINE IN ROW 19,
10:04AM 5 ACTIVITIES DURING THE WEEK.
10:04AM 6 DO YOU SEE THAT?
10:04AM 7 A. YES.
10:04AM 8 Q. AND WHAT INFORMATION IS SUMMARIZED THERE?
10:04AM 9 A. THAT ONE IS ALL OF THE PAYMENTS THAT THE COMPANY MADE, THE
10:04AM 10 CASH OUTFLOW.
10:04AM 11 Q. AND WOULD THAT INCLUDE ROUTINE EXPENSES OF THE COMPANY?
10:04AM 12 A. ALL ROUTINE EXPENSES OF THE COMPANY.
10:04AM 13 Q. OKAY. WOULD THAT INCLUDE SALARIES OF EMPLOYEES?
10:04AM 14 A. YES.
10:04AM 15 Q. OKAY. BENEATH THE TOTAL PAYMENTS, THERE ARE LINES FOR
10:04AM 16 CUSTOMER RECEIPTS, OPTION STOCK PROCEEDS, OTHER DEPOSITS,
10:04AM 17 INTEREST INCOME.
10:04AM 18 DO YOU SEE THAT?
10:04AM 19 A. YES.
10:04AM 20 Q. AND WHAT DO THOSE REPRESENT?
10:04AM 21 A. THAT'S THE CASH THAT IS GOING INTO THE COMPANY.
10:04AM 22 Q. OKAY. AND WHAT IS MEANT BY OPTIONS/STOCK PROCEEDS?
10:05AM 23 A. WHEN THE COMPANY GRANT OPTIONS TO OPTIONEE, IF THEY WANT
10:05AM 24 TO EXERCISE THAT OPTION, THEN THEY PAY THE COMPANY, THAT WOULD
10:05AM 25 BE THE OPTION PROCEEDS.

10:05AM 1 AND THE STOCK PROCEEDS IS THE STOCK THAT THE COMPANY SELLS
10:05AM 2 TO INVESTORS.
10:05AM 3 Q. OKAY. I WANT TO DRAW YOUR ATTENTION TO A TIME PERIOD IN
10:05AM 4 2019. WHEN YOU WERE AT THERANOS, DID YOU GO BY ANOTHER NAME?
10:05AM 5 A. DANISE YAM.
10:05AM 6 Q. AND WHEN YOU WOULD SEND AND RECEIVE EMAILS, WOULD IT USE
10:05AM 7 YOUR FORMER NAME, DANISE YAM?
10:05AM 8 A. YES.
10:05AM 9 Q. AND YOU CURRENTLY GO BY MS. SPIVEY?
10:05AM 10 A. YES.
10:05AM 11 Q. OKAY. MS. SPIVEY, I'D LIKE TO DRAW YOUR ATTENTION TO
10:05AM 12 COLUMN EH.
10:06AM 13 MS. WACHS, IF WE COULD MOVE TO THE RIGHT HERE.
10:06AM 14 OKAY. WE'VE HIGHLIGHTED ROW EH ON THE SCREEN, MS. SPIVEY.
10:06AM 15 DOES THIS APPEAR TO COVER THE PERIOD AUGUST 12TH, 2013, TO
10:06AM 16 AUGUST 18TH, 2013?
10:06AM 17 A. YES.
10:06AM 18 Q. OKAY. AND THE TOTAL CASH BALANCE AT THE END OF THIS
10:06AM 19 PERIOD WAS \$44 MILLION APPROXIMATELY?
10:06AM 20 A. YES.
10:06AM 21 Q. OKAY. AND 3.6 MILLION OF THAT WAS IN A COMERICA ACCOUNT?
10:06AM 22 A. YES.
10:06AM 23 Q. OKAY. WAS THE COMERICA ACCOUNT YOUR PRIMARY CHECKING
10:06AM 24 ACCOUNT AT THE TIME?
10:06AM 25 A. YES.

10:06AM 1 Q. AND THERE'S \$32 MILLION IN THE FIDELITY ACCOUNT.

10:06AM 2 DO YOU SEE THAT?

10:06AM 3 A. YES.

10:06AM 4 Q. AND THE NEXT WEEK THE TOTAL CASH BALANCE DROPS TO

10:06AM 5 \$22,813,154.

10:07AM 6 DO YOU SEE THAT?

10:07AM 7 A. YES.

10:07AM 8 Q. AND DO YOU SEE THAT THERE'S A CHANGE FROM THE FIDELITY

10:07AM 9 ACCOUNT OF ROUGHLY \$20 MILLION?

10:07AM 10 A. YES.

10:07AM 11 Q. OKAY. AND THEN FURTHER BELOW IN ROW 22 THERE'S A NEGATIVE

10:07AM 12 ENTRY FOR \$18,500,000.

10:07AM 13 DO YOU SEE THAT?

10:07AM 14 A. YES.

10:07AM 15 Q. AND DO YOU KNOW WHAT THAT \$18,500,000 REPRESENTS?

10:07AM 16 A. IT'S A REFUND TO THE INSURANCE COMPANY.

10:07AM 17 Q. AND WHEN YOU SAY IT WAS A REFUND TO AN INSURANCE COMPANY,

10:07AM 18 WHAT DO YOU MEAN?

10:07AM 19 A. THERANOS HAD AN ACCOUNT WITH THE INSURANCE, SOME INSURANCE

10:07AM 20 COMPANY, AND THEY PAID SOME UP-FRONT PAYMENT TO THERANOS ALL IN

10:07AM 21 2011. AND AS FAR AS I UNDERSTAND, BECAUSE THERE'S NO

10:07AM 22 ACTIVITIES TO THIS CONTRACT OR THE CONTRACT WAS NOT -- THERE'S

10:08AM 23 NO WORK DONE TO THAT, AND SO THE COMPANY REFUNDED THOSE

10:08AM 24 AMOUNTS.

10:08AM 25 Q. SO THE COMPANY REFUNDED \$18.5 MILLION THIS WEEK IN 2013?

10:08AM 1 A. YES.

10:08AM 2 Q. OKAY. AND THAT'S SOMETHING THAT YOU HELPED EXECUTE?

10:08AM 3 A. YES.

10:08AM 4 Q. WHO DIRECTED YOU TO DO THAT?

10:08AM 5 A. IT WOULD EITHER BE MS. HOLMES OR MR. BALWANI.

10:08AM 6 Q. OKAY. AND THERE'S A CHANGE IN THE FIDELITY ACCOUNT OF

10:08AM 7 \$20 MILLION.

10:08AM 8 DO YOU SEE THAT IN THAT ROW?

10:08AM 9 A. YES.

10:08AM 10 Q. AND DOES THAT MEAN IN ORDER TO MAKE THIS \$18.5 MILLION

10:08AM 11 PAYMENT, YOU WERE DIPPING INTO THE FIDELITY ACCOUNT?

10:08AM 12 A. YES.

10:08AM 13 Q. LET'S MOVE FORWARD IN TIME TO ROW EI. I'M SORRY, WE'RE ON

10:09AM 14 EI. EN. COLUMN EN.

10:09AM 15 IS THIS THE -- DOES THIS SUMMARIZE THE CASH BALANCE AND

10:09AM 16 ACTIVITY FOR THE WEEK OF SEPTEMBER 23RD, 2003, OR 2013?

10:09AM 17 A. YES.

10:09AM 18 Q. YES. AND IN LINE 8 IN THE COMERICA ACCOUNT, DO YOU SEE

10:09AM 19 THE NUMBER \$587,419?

10:09AM 20 A. YES.

10:09AM 21 Q. AND IN THE FIDELITY ACCOUNT THERE'S \$5,507,882?

10:09AM 22 A. YES.

10:09AM 23 Q. OKAY. AND THE TOTAL CASH BALANCE IS \$14,463,111.

10:09AM 24 DID I READ THAT RIGHT?

10:10AM 25 A. YES.

10:10AM 1 Q. OKAY. AND OF THAT 14 MILLION, DOES SOME OF THAT INCLUDE
10:10AM 2 THE MORGAN STANLEY LETTER OF CREDIT?

10:10AM 3 A. CORRECT.

10:10AM 4 Q. AND WAS THAT MONEY THAT YOU FELT THAT YOU COULD USE AS
10:10AM 5 THERANOS WISHED IN THAT WEEK OF 2013?

10:10AM 6 A. EXCLUDE THE 7.5 MILLION.

10:10AM 7 Q. SO IF WE'RE TRYING TO UNDERSTAND THERANOS'S CASH BALANCE
10:10AM 8 AT THIS TIME, WE SHOULD EXCLUDE THAT 7.5 MILLION?

10:10AM 9 A. THE CASH BALANCE IS STILL 14 MILLION. IT'S 14.4 MILLION.
10:10AM 10 BUT FOR MONEY THAT THE COMPANY CAN USE, IT WOULD EXCLUDE
10:10AM 11 THE 7.5 MILLION.

10:10AM 12 Q. OKAY. IF WE LOOK AT THE NEXT WEEK IN EO, THERE'S AN ENTRY
10:10AM 13 OF STOCK PROCEEDS OF \$21,999,100.

10:11AM 14 DO YOU SEE THAT?

10:11AM 15 A. YES.

10:11AM 16 Q. AND WHAT DOES THAT REPRESENT?

10:11AM 17 A. IT REPRESENTS EITHER THE COMPANY SOLD SOME STOCK TO AN
10:11AM 18 INVESTOR OR THE OPTIONEE EXERCISED THE OPTION OR A COMBINATION
10:11AM 19 OF BOTH.

10:11AM 20 Q. OKAY. I WANTS TO DRILL DOWN A LITTLE BIT ON THAT
10:11AM 21 \$21 MILLION AND SEE IF I CAN REFRESH YOUR MEMORY ON THAT.

10:11AM 22 DO YOU SEE THE TABS AT THE BOTTOM OF THE EXCEL
10:11AM 23 SPREADSHEET?

10:11AM 24 A. YES.

10:11AM 25 Q. AND WE'RE ON THE TAB FOR SUMMARY?

10:11AM 1 A. YES.

10:11AM 2 Q. OKAY. AND IF WE CAN NOW GO TO THE TAB FOR COMERICA.

10:11AM 3 AND IF WE CAN GO BACK TO THIS TIME PERIOD, MS. WACHS, I

10:12AM 4 THINK IF WE PUSH THE BUTTON ABOVE PLUS HH, IT SHOULD EXPAND.

10:12AM 5 DO YOU SEE THAT SAME NUMBER \$21,995,100 IN ROW 23?

10:12AM 6 A. YES.

10:12AM 7 Q. AND IS THIS A SUMMARY OF JUST THE COMERICA ACCOUNT AS

10:12AM 8 OPPOSED TO ALL OF THE ACCOUNTS?

10:12AM 9 A. CORRECT.

10:12AM 10 Q. OKAY. AND, MS. WACHS, IF WE CAN CLICK ON THAT BOX WITH

10:12AM 11 THE RED NOTE. IF WE CLICK ON THE 21 MILLION BOX.

10:12AM 12 MS. SPIVEY, IS THERE A NOTE BY YOU IN THIS BOX?

10:12AM 13 A. YES.

10:12AM 14 Q. OKAY. AND IT SAYS 15M PEER AND THEN OTHER NUMBERS LVG.

10:12AM 15 DO YOU SEE THAT?

10:12AM 16 A. YES.

10:12AM 17 Q. AND DO YOU RECOGNIZE THE NAME PEER?

10:12AM 18 A. YES.

10:12AM 19 Q. AND WHAT IS THE NAME PEER?

10:12AM 20 A. IT'S AN INVENTOR.

10:12AM 21 Q. AND LVG, IS THAT ANOTHER THERANOS INVESTOR?

10:13AM 22 A. YES.

10:13AM 23 Q. AND DID THIS \$21,995,100 HELP ADD TO THERANOS'S CASH

10:13AM 24 POSITION IN THIS LATE SEPTEMBER TIME PERIOD?

10:13AM 25 A. YES.

10:13AM 1 Q. ARE YOU FAMILIAR WITH THE TERM "BURN RATE"?

10:13AM 2 A. YES.

10:13AM 3 Q. AND WHAT IS A BURN RATE?

10:13AM 4 A. THAT'S THE MONEY, OR THAT'S THE MONEY THAT THE COMPANY

10:13AM 5 SPENT AFTER THEY HAVE ANY CASH RECEIPTS.

10:13AM 6 Q. OKAY. AND DID YOU HAVE A SENSE OF THE COMPANY'S BURN RATE

10:13AM 7 IN THIS 2013 TIME PERIOD?

10:13AM 8 A. IT'S ABOUT, IT'S ABOUT \$2 MILLION A WEEK.

10:13AM 9 Q. \$2 MILLION A WEEK?

10:13AM 10 A. YES.

10:13AM 11 Q. SO WHEN THE COMERICA ACCOUNT WAS GETTING DOWN TO \$587,419

10:13AM 12 AT THE END OF SEPTEMBER, WAS THAT CAUSING YOU ANY CONCERN?

10:14AM 13 A. FOR JUST THE COMERICA ACCOUNT?

10:14AM 14 Q. WELL, COMERICA AND THE FIDELITY ACCOUNT -- IF WE CAN GO

10:14AM 15 BACK TO THE SUMMARY IN COLUMN EN.

10:14AM 16 DO YOU SEE THE LINE FOR TOTAL CASH BALANCE?

10:14AM 17 A. YES.

10:14AM 18 Q. AND IF WE DON'T COUNT THE LETTER OF CREDIT, THERANOS'S

10:14AM 19 CASH BALANCE IS SOMEWHERE IN THE NEIGHBORHOOD OF \$7 MILLION?

10:14AM 20 A. CORRECT.

10:14AM 21 Q. AND WAS THAT CAUSING YOU ANY CONCERN DURING THIS TIME

10:14AM 22 PERIOD?

10:14AM 23 A. YES.

10:14AM 24 Q. THANK YOU, MS. WACHS. YOU CAN TAKE THAT DOWN.

10:14AM 25 I'D LIKE TO STEP BACK IN TIME A LITTLE BIT, MS. YAM, AND

10:14AM 1 TALK ABOUT THERANOS'S REVENUE FOR PARTICULAR PERIODS OF TIME
10:14AM 2 WHILE YOU SERVED AS THE CONTROLLER.

10:14AM 3 AND MAY I APPROACH, YOUR HONOR?

10:15AM 4 THE COURT: YES.

10:15AM 5 MR. LEACH: (HANDING.)

10:15AM 6 Q. I'VE PLACED ANOTHER BINDER BEFORE YOU, MS. SPIVEY. IF I
10:15AM 7 COULD ASK YOU TO LOOK IN VOLUME 1 AT EXHIBIT 578.

10:15AM 8 MS. SPIVEY, IS THIS A COPY OF AN EMAIL THAT YOU SENT TO AN
10:15AM 9 AUDITOR AT KPMG IN THE TIME PERIOD APRIL OF 2012?

10:15AM 10 A. YES.

10:15AM 11 Q. AND WERE YOU SENDING FINANCIAL INFORMATION TO THE KPMG
10:16AM 12 AUDITOR AS PART OF THEIR EFFORT TO REVIEW OR AUDIT THE BOOKS AT
10:16AM 13 THE TIME?

10:16AM 14 A. YES.

10:16AM 15 Q. OKAY. AND THE SPREADSHEET THAT YOU SENT, DID YOU PREPARE
10:16AM 16 THAT IN THE ORDINARY COURSE OF BUSINESS?

10:16AM 17 A. YES.

10:16AM 18 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
10:16AM 19 EXHIBIT 578.

10:16AM 20 THE COURT: 578?

10:16AM 21 MR. LEACH: 578 IN VOLUME 1.

10:16AM 22 THE COURT: MR. COOPERSMITH.

10:16AM 23 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:16AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:16AM 25 (GOVERNMENT'S EXHIBIT 578 WAS RECEIVED IN EVIDENCE.)

10:16AM 1 BY MR. LEACH:

10:16AM 2 Q. MS. SPIVEY, JUST TO ORIENT US.

10:16AM 3 DO YOU SEE THE NAME DANISE YAM IN THE FROM MESSAGE AT THE

10:16AM 4 TOP?

10:16AM 5 A. YES.

10:17AM 6 Q. AND THAT'S THE NAME THAT YOU WENT BY AT THE TIME THAT YOU

10:17AM 7 WORKED AT THERANOS?

10:17AM 8 A. YES.

10:17AM 9 Q. AND THIS IS TO AN AUDITOR AT KPMG?

10:17AM 10 A. YES.

10:17AM 11 Q. OKAY. AND YOU WOULD PERIODICALLY SEND INFORMATION LIKE

10:17AM 12 THIS TO KPMG IN THE COURSE OF YOUR WORK?

10:17AM 13 A. YES.

10:17AM 14 Q. OKAY. LET'S LOOK AT THE ATTACHMENT.

10:17AM 15 AND I'D LIKE TO USE THE NATIVE IF WE COULD, MS. WACHS.

10:17AM 16 ARE YOU ABLE TO SEE THAT ON THE SCREEN, MS. SPIVEY?

10:17AM 17 A. YES.

10:17AM 18 Q. OKAY. DOWN IN THE BOTTOM LEFT CORNER THERE'S A WORKSHEET

10:17AM 19 TAB THAT SAYS TB.

10:17AM 20 DO YOU SEE THAT?

10:17AM 21 A. YES.

10:17AM 22 Q. AND WHAT DOES TB STAND FOR?

10:17AM 23 A. TRIAL BALANCE.

10:17AM 24 Q. AND WHAT IS A TRIAL BALANCE?

10:17AM 25 A. IT'S A LIST THAT BALANCES THE FINANCIAL ACCOUNTS OF THE

10:17AM 1 COMPANY.

10:17AM 2 Q. OKAY. TO THE RIGHT THERE'S A SHEET THAT SAYS TO/BS.

10:18AM 3 DO YOU SEE THAT?

10:18AM 4 A. YES.

10:18AM 5 Q. AND IS BS AN ACRONYM FOR BALANCE SHEET?

10:18AM 6 A. YES.

10:18AM 7 Q. OKAY. AND IF WE COULD -- WELL, BEFORE WE DO THAT -- WELL,

10:18AM 8 LET'S DO THAT NOW, MS. WACHS, PLEASE. IF WE CAN CLICK ON THAT.

10:18AM 9 DO YOU SEE WHERE IT SAYS THERANOS INC., CONSOLIDATED

10:18AM 10 BALANCE SHEETS?

10:18AM 11 A. YES.

10:18AM 12 Q. AND NOW, WERE THESE BALANCE SHEETS AUDITED?

10:18AM 13 A. NO.

10:18AM 14 Q. OKAY. BUT DO YOU RECOGNIZE TO THEY ACCURATELY REPRESENT

10:18AM 15 THE BALANCE SHEETS OF THERANOS FOR THESE PARTICULAR TIME

10:18AM 16 PERIODS?

10:18AM 17 A. YES.

10:18AM 18 Q. AND YOU DID YOUR BEST TO GIVE ACCURATE INFORMATION TO

10:18AM 19 KPMG?

10:18AM 20 A. YES.

10:18AM 21 Q. OKAY. LET ME DRAW YOUR ATTENTION, PLEASE, IF WE COULD

10:18AM 22 SCROLL DOWN TO THE ACCUMULATED DEFICITS.

10:18AM 23 DO YOU SEE LINE 47, MS. SPIVEY?

10:19AM 24 A. YES.

10:19AM 25 Q. AND WE TALKED EARLIER ABOUT THE ACCUMULATED DEFICIT.

10:19AM 1 THAT'S THE TOTAL LOSS THAT THE COMPANY HAS INCURRED OVER ITS
10:19AM 2 ENTIRE EXISTENCE?
10:19AM 3 A. YES.
10:19AM 4 Q. OKAY. TO THE RIGHT THERE'S A NUMBER, \$104,087,094.
10:19AM 5 DO YOU SEE THAT?
10:19AM 6 A. YES.
10:19AM 7 Q. AND IS THAT THE TOTAL LOSS OF THE THERANOS OVER THE ENTIRE
10:19AM 8 PERIOD OF TIME OF ITS EXISTENCE UP UNTIL THIS DATE?
10:19AM 9 A. YES.
10:19AM 10 Q. OKAY. AND IF YOU COULD SCROLL BACK UP, MS. WACHS.
10:19AM 11 THAT TIME PERIOD IS YEAR END 2011?
10:19AM 12 A. YES.
10:19AM 13 Q. OKAY. LET'S DRAW YOUR ATTENTION TO THE BOTTOM TABS AGAIN,
10:19AM 14 THERE'S A TAB 3, IS.
10:19AM 15 DO YOU SEE THAT?
10:19AM 16 A. YES.
10:19AM 17 Q. AND WHAT DOES IS STAND FOR?
10:19AM 18 A. INCOME STATEMENT.
10:19AM 19 Q. OKAY. IF YOU COULD CLICK ON THAT, PLEASE.
10:20AM 20 DOES THIS REPRESENT THERANOS'S INCOME STATEMENT FOR THE
10:20AM 21 TIME PERIOD 2009, 2010, AND 2011?
10:20AM 22 A. YES.
10:20AM 23 Q. AND WERE THESE NUMBERS EVER AUDITED BY KPMG?
10:20AM 24 A. NO.
10:20AM 25 Q. BUT TO THE BEST OF YOUR KNOWLEDGE THEY'RE ACCURATE?

10:20AM 1 A. YES.

10:20AM 2 Q. OKAY. AND THERE'S THAT LINE REVENUE.

10:20AM 3 DO YOU SEE THAT?

10:20AM 4 A. YES.

10:20AM 5 Q. WHAT WAS THERANOS'S REVENUE FOR 2009?

10:20AM 6 A. \$2,793,846.

10:20AM 7 Q. AND FOR 2010 WAS ITS REVENUE \$1,401,305?

10:20AM 8 A. YES.

10:20AM 9 Q. AND FOR 2011 WAS IT \$518,248?

10:20AM 10 A. YES.

10:20AM 11 Q. AND HOW DOES REVENUE DIFFER FROM CASH?

10:21AM 12 A. REVENUE IS THE MONEY THAT YOU HAVE TO EARN FOR PROVIDING

10:21AM 13 SERVICES OR SELLING GOODS.

10:21AM 14 Q. OKAY. IS REVENUE AN IMPORTANT METRIC TO SOMEONE LIKE YOU?

10:21AM 15 A. YES.

10:21AM 16 Q. FURTHER DOWN BELOW THERE'S A LINE FOR NET LOSS.

10:21AM 17 DO YOU SEE THAT?

10:21AM 18 A. YES.

10:21AM 19 Q. AND DOES THAT ROW ACCURATELY REPRESENT THE NET LOSS OF THE

10:21AM 20 COMPANY FOR THE TIME PERIODS 2009, 2010, AND 2011?

10:21AM 21 A. YES.

10:21AM 22 Q. OKAY. WE CAN TAKE THAT DOWN, MS. WACHS.

10:21AM 23 MS. SPIVEY, IF I COULD DRAW YOUR ATTENTION, PLEASE, TO

10:21AM 24 EXHIBIT 792, WHICH SHOULD BE IN THE SAME BINDER.

10:21AM 25 IS THIS A TRUE AND CORRECT COPY OF AN EMAIL THAT YOU SENT

10:22AM 1 TO MS. HOLMES WITH A COPY TO MR. BALWANI ON OR ABOUT
10:22AM 2 FEBRUARY 12TH, 2013?
10:22AM 3 A. YES.
10:22AM 4 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
10:22AM 5 EXHIBIT 792.
10:22AM 6 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
10:22AM 7 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
10:22AM 8 (GOVERNMENT'S EXHIBIT 792 WAS RECEIVED IN EVIDENCE.)
10:22AM 9 BY MR. LEACH:
10:22AM 10 Q. MS. SPIVEY, WHAT WAS THE GENERAL NATURE OF THIS EMAIL?
10:22AM 11 A. UM --
10:22AM 12 Q. LET ME ASK A BETTER QUESTION, MS. SPIVEY.
10:22AM 13 WHY WERE YOU SENDING THIS EMAIL TO MS. HOLMES WITH A COPY
10:22AM 14 TO MR. BALWANI?
10:22AM 15 A. IT SEEMS LIKE THIS IS SOMETHING THAT STANFORD ASKED
10:23AM 16 THERANOS TO PROVIDE FOR THE FINANCIAL ANALYSIS THAT THE
10:23AM 17 LANDLORD WANTED THERANOS TO PROVIDE.
10:23AM 18 Q. WAS STANFORD THERANOS'S LANDLORD AT THE TIME?
10:23AM 19 A. YES.
10:23AM 20 Q. OKAY. LET ME DRAW YOUR ATTENTION TO THE TOP HALF. WERE
10:23AM 21 YOU SENDING THIS INFORMATION TO MS. HOLMES WITH A COPY TO
10:23AM 22 MR. BALWANI SO THEY COULD REPORT ON THE FINANCIAL CONDITION TO
10:23AM 23 THERANOS'S LANDLORD?
10:23AM 24 A. YES.
10:23AM 25 Q. OKAY. IN THE BOTTOM EMAIL YOU WROTE "ADDED 25 M TO AR."

10:23AM 1 IS AR ACCOUNTS RECEIVABLE?

10:23AM 2 A. YES.

10:23AM 3 Q. AND WHAT ARE ACCOUNTS RECEIVABLE?

10:23AM 4 A. I'M SORRY?

10:23AM 5 Q. WHAT ARE ACCOUNTS RECEIVABLE?

10:23AM 6 A. IT'S THE SERVICES THAT, OR THE MONEY THAT THE CUSTOMER

10:23AM 7 OWED TO THERANOS.

10:24AM 8 Q. AND DEFERRED REVENUE FROM SWY PILOT COMPLETE.

10:24AM 9 DO YOU SEE THAT?

10:24AM 10 A. YES.

10:24AM 11 Q. AND IS SWY AN ACRONYM FOR SOMEBODY?

10:24AM 12 A. SAFEWAY.

10:24AM 13 Q. AND WHAT RELATIONSHIP DID THERANOS HAVE WITH SAFEWAY

10:24AM 14 DURING THIS TIME PERIOD?

10:24AM 15 A. SAFEWAY WAS A CUSTOMER OR BUSINESS PARTNER.

10:24AM 16 Q. AND THERE'S THESE WORDS DEFERRED REVENUE. WHAT DOES

10:24AM 17 DEFERRED REVENUE MEAN?

10:24AM 18 A. IT MEANS MONEY THAT THE COMPANY RECEIVED BUT HAS NOT

10:24AM 19 EARNED.

10:24AM 20 Q. SO IS THERE SOME POSSIBILITY THAT THE COMPANY MIGHT HAVE

10:24AM 21 TO GIVE THAT MONEY BACK?

10:24AM 22 MR. COOPERSMITH: OBJECTION. LEADING.

10:24AM 23 THE COURT: OVERRULED.

10:24AM 24 YOU CAN ANSWER THE QUESTION.

10:24AM 25 THE WITNESS: YES.

10:24AM 1 BY MR. LEACH:

10:24AM 2 Q. OKAY. LET'S ZOOM OUT, MS. WACHS.

10:25AM 3 I WANT TO DRAW YOUR ATTENTION TO THE TOP EMAIL,

10:25AM 4 MS. SPIVEY.

10:25AM 5 DO YOU SEE THAT THERE ARE TWO ATTACHMENTS, FINANCIAL

10:25AM 6 STATEMENT ANALYSIS TEMPLATE AND FS 2012 XLSX.

10:25AM 7 A. YES.

10:25AM 8 Q. FS, THAT'S AN ACRONYM FOR FINANCIAL STATEMENT?

10:25AM 9 A. YES.

10:25AM 10 Q. AND I'D LIKE TO LOOK AT THE XLSX 2012, AND IT MAY BE

10:25AM 11 EASIER IF WE DO IT IN NATIVE, MS. WACHS.

10:25AM 12 WONDERFUL, THANK YOU.

10:25AM 13 ARE WE LOOKING AT THE COMPANY'S BALANCE SHEET FOR THE TIME

10:25AM 14 PERIOD ENDING DECEMBER OF 2012, MS. SPIVEY?

10:25AM 15 A. YES.

10:25AM 16 Q. AND DOES IT ALSO INCLUDE THE FIRST MONTH OF 2013?

10:25AM 17 A. YES.

10:25AM 18 Q. OKAY. LET ME DRAW YOUR ATTENTION TO ROW 33.

10:26AM 19 DO YOU SEE THAT LINE FOR ACCUMULATED DEFICIT?

10:26AM 20 A. YES.

10:26AM 21 Q. AND WHAT WAS THERANOS'S ACCUMULATED DEFICIT IN 2012?

10:26AM 22 A. IT'S ABOUT 161 MILLION.

10:26AM 23 Q. OKAY. EVEN THOUGH THAT NUMBER IN ROW 33 IS IN THOUSANDS,

10:26AM 24 YOU MEAN TO EXPRESS THIS IN MILLIONS?

10:26AM 25 A. YES.

10:26AM 1 Q. IS THAT WHY IT HAS IN ROW 6 THE DOLLAR SIGN WITH THREE
10:26AM 2 ZEROS?

10:26AM 3 A. YES.

10:26AM 4 Q. OKAY. IS TAB IS INCOME STATEMENT?

10:26AM 5 A. YES.

10:26AM 6 Q. LET'S LOOK AT THAT TAB, PLEASE.

10:26AM 7 IS THIS A TRUE AND CORRECT COPY OF THERANOS'S INCOME
10:26AM 8 STATEMENT FOR THE TIME PERIOD ENDING 2012 AND THE FIRST MONTH
10:26AM 9 OF 2013?

10:26AM 10 A. YES.

10:26AM 11 Q. THE FIRST LINE IN ROW 5 SAYS OPERATING LOSS.
10:26AM 12 DO YOU SEE THAT?

10:26AM 13 A. YES.

10:26AM 14 Q. AND THERE'S NO LINE IN THIS SPREADSHEET FOR REVENUE. WHY
10:27AM 15 IS THAT?

10:27AM 16 A. BECAUSE THERE WAS NO REVENUE.

10:27AM 17 Q. SO THERE WAS NO REVENUE FOR THE YEAR 2012?

10:27AM 18 A. CORRECT.

10:27AM 19 Q. OKAY. AND ARE THESE NUMBERS ALSO EXPRESSED IN THOUSANDS
10:27AM 20 LIKE THE BALANCE SHEET THAT WE JUST LOOKED AT?

10:27AM 21 A. YES.

10:27AM 22 Q. SO WHAT WAS THE NET LOSS FOR 2012?

10:27AM 23 A. ABOUT 57 MILLION.

10:27AM 24 Q. OKAY. WE CAN TAKE THAT DOWN, MS. WACHS.
10:27AM 25 MS. SPIVEY, IF I COULD ASK YOU TO PLEASE LOOK AT

10:27AM 1 EXHIBIT 1901, 1901.

10:27AM 2 DO YOU HAVE THAT IN FRONT OF YOU?

10:27AM 3 A. YES.

10:27AM 4 Q. THIS APPEARS TO BE AN EMAIL FROM YOU TO MARK KUCHARSKI AND
10:28AM 5 DENNIS ONDYAK.

10:28AM 6 DO YOU RECOGNIZE THOSE NAMES?

10:28AM 7 A. YES.

10:28AM 8 Q. AND WHO ARE THEY?

10:28AM 9 A. THEY ARE THE PARTNER AND THE MANAGER OF THE TAX -- OR THE
10:28AM 10 ACCOUNTING FIRM THAT PREPARED THE TAX RETURNS FOR THERANOS.

10:28AM 11 Q. THEY PREPARED TAX RETURNS FOR THERANOS?

10:28AM 12 A. YES.

10:28AM 13 Q. OKAY. AND THERE'S A NUMBER OF ATTACHMENTS TO THIS.

10:28AM 14 DO YOU SEE THE ATTACHMENTS?

10:28AM 15 A. YES.

10:28AM 16 Q. AND WERE YOU PROVIDING ACCOUNTING DATA FROM THERANOS'S
10:28AM 17 BOOKS AND RECORDS SO THAT THE TAX ACCOUNTANT COULD PREPARE THE
10:28AM 18 TAX RETURNS?

10:28AM 19 A. YES.

10:28AM 20 Q. AND WERE THESE EXCEL FILES PREPARED IN THE ORDINARY COURSE
10:28AM 21 OF BUSINESS?

10:28AM 22 A. YES.

10:28AM 23 Q. OKAY. AND DID YOU DO YOUR BEST TO PROVIDE ACCURATE
10:28AM 24 INFORMATION TO THE TAX ACCOUNTANTS?

10:28AM 25 A. YES.

10:28AM 1
10:28AM 2
10:28AM 3
10:28AM 4
10:29AM 5
10:29AM 6
10:29AM 7
10:29AM 8
10:29AM 9
10:29AM 10
10:29AM 11
10:29AM 12
10:29AM 13
10:29AM 14
10:29AM 15
10:29AM 16
10:29AM 17
10:29AM 18
10:29AM 19
10:29AM 20
10:29AM 21
10:29AM 22
10:29AM 23
10:29AM 24
10:30AM 25

Q. OKAY.

YOUR HONOR, I OFFER EXHIBIT 1901, AND A NUMBER OF THESE ATTACHMENTS ARE QUITE LARGE, BUT THE ONLY ONE I WANT TO OFFER IS THE ONE TB 123113.XLSX.

THE COURT: CAN YOU TELL US WHAT PAGE THAT'S FOUND ON? IS THAT POSSIBLE?

MR. LEACH: I CAN'T. I'M HOPING THERE'S NO OBJECTION TO THIS.

MR. COOPERSMITH: I CAN HELP, YOUR HONOR. THERE'S NO OBJECTION.

THE COURT: OKAY.

MR. LEACH: THESE SPREADSHEETS ARE CUMBERSOME TO PRINT, SO MAYBE THAT WILL HELP US.

MAY I DISPLAY IT?

THE COURT: YES. PLEASE.

(GOVERNMENT'S EXHIBIT 1901, TB 123113.XLSX, WAS RECEIVED IN EVIDENCE.)

BY MR. LEACH:

Q. MS. SPIVEY, JUST TO ORIENT US, IF WE CAN ZOOM IN ON THE EMAIL AT THE TOP, DO YOU SEE YOUR FORMER NAME IN THE FROM LINE?

A. YES.

Q. OKAY. AND DENNIS ONDYAK, HE'S ONE OF THE TAX PREPARERS?

A. YES.

Q. AND DO YOU SEE THE FILES THAT ARE ATTACHED TO THIS EMAIL?

A. YES.

10:30AM 1 Q. I'M CENTERED IN THE SECOND ONE FROM THE BOTTOM

10:30AM 2 TB 12-31-13.

10:30AM 3 DO YOU SEE THAT?

10:30AM 4 A. YES.

10:30AM 5 Q. AND, MS. WACHS, IF WE CAN CALL IT UP ON THE SCREEN,

10:30AM 6 PLEASE.

10:30AM 7 IS THIS A TRUE AND CORRECT COPY OF ACCOUNTING DATA FROM

10:30AM 8 THERANOS AT THE TIME?

10:30AM 9 A. YES.

10:30AM 10 Q. WE'RE ON THE TAB 3.OPS.

10:30AM 11 DO YOU SEE THAT?

10:30AM 12 A. YES.

10:30AM 13 Q. AND WHAT DOES OPS REFER TO?

10:30AM 14 A. OPERATIONS.

10:30AM 15 Q. OKAY. AND IS IT, IN OTHER VERSIONS WE'VE SEEN, IS, OR

10:30AM 16 INCOME STATEMENTS, IS THIS THE SAME THING?

10:30AM 17 A. YES.

10:30AM 18 Q. AND DOES THIS INCLUDE THERANOS'S REVENUE FOR THE TIME

10:30AM 19 PERIODS 2013, 2012, 2011, 2010, AND 2009?

10:31AM 20 A. YES.

10:31AM 21 Q. I WANT TO DRAW YOUR ATTENTION TO THE TIME PERIOD 2013.

10:31AM 22 DO YOU SEE HOW THERE'S A LINE IN THE REVENUE LINE?

10:31AM 23 A. YES.

10:31AM 24 Q. AND WHAT DOES THAT MEAN?

10:31AM 25 A. IT MEANS THAT THE REVENUE WAS ZERO.

10:31AM 1 Q. THE REVENUE WAS ZERO FOR 2013?

10:31AM 2 A. RIGHT.

10:31AM 3 Q. OKAY. AND THE NET LOSS, DO YOU SEE THE NUMBER IN RED IN
10:31AM 4 LINE 13?

10:31AM 5 A. YES.

10:31AM 6 Q. AND WHAT WAS THE NET LOSS FOR THERANOS IN THE 2013 TIME
10:31AM 7 PERIOD?

10:31AM 8 A. IT'S ABOUT 92 MILLION.

10:31AM 9 Q. THANK YOU, MS. WACHS. WE CAN PUT THAT DOWN.

10:31AM 10 AND, MS. SPIVEY, IF I COULD DRAW YOUR ATTENTION TO
10:31AM 11 EXHIBIT 5276. IT SHOULD BE IN VOLUME 1.

10:32AM 12 DO YOU HAVE THAT IN FRONT OF YOU, MS. SPIVEY?

10:32AM 13 A. YES.

10:32AM 14 Q. IS THIS A TRUE AND CORRECT COPY OF AN EMAIL THAT YOU SENT
10:32AM 15 TO ELIZABETH HOLMES AND MR. BALWANI ON OR ABOUT APRIL 7TH,
10:32AM 16 2015?

10:32AM 17 A. YES.

10:32AM 18 Q. I'M SORRY, YES?

10:32AM 19 A. YES.

10:32AM 20 Q. OKAY. AND THE SUBJECT IS THERANOS: 409A VALUATION
10:32AM 21 ANALYSIS.

10:32AM 22 WHAT IS A 409A VALUATION ANALYSIS?

10:32AM 23 A. 409A IS AN I.R.S. CODE. FOR THERANOS PURPOSE, IT WOULD BE
10:32AM 24 FOR THE COMPANY OPTION.

10:32AM 25 Q. WHAT DO YOU MEAN BY THAT? WHY IS, WHY IS THERANOS

10:32AM 1 PREPARING SOME -- OR HAVING A 409A ANALYSIS PREPARED?

10:33AM 2 A. BECAUSE WHEN THE COMPANY ISSUES STOCK OPTION, WE NEED TO

10:33AM 3 KNOW WHAT THE PREDETERMINED EXERCISE PRICE SHOULD BE, AND THAT

10:33AM 4 SHOULD BE THE FAIR MARKET VALUE.

10:33AM 5 AND THIS 409 ANALYSIS, THIS 409 VALUATION ANALYSIS IS TO

10:33AM 6 ESTABLISH THAT FAIR MARKET VALUE.

10:33AM 7 Q. OKAY. AND WHY ARE YOU SENDING THIS EMAIL TO MR. BALWANI

10:33AM 8 AND MS. HOLMES?

10:33AM 9 A. SO THEY KNOW WHAT THE FAIR MARKET VALUE IS.

10:33AM 10 Q. THERE'S REFERENCES -- LET ME DRAW YOUR ATTENTION TO

10:33AM 11 PAGE -- THERE ARE TWO ATTACHMENTS TO THIS, MS. SPIVEY.

10:33AM 12 LET ME DRAW YOUR ATTENTION TO PAGE 14 OF THE EXHIBIT.

10:33AM 13 MR. COOPERSMITH: YOUR HONOR, I'M SORRY. I'M HAVING

10:33AM 14 TROUBLE FINDING THE EXHIBIT IN THE BINDER. IS IT 5276?

10:34AM 15 MR. LEACH: I'M SORRY, 5206.

10:34AM 16 MR. COOPERSMITH: YES, YOUR HONOR, I HAVE THAT ONE.

10:34AM 17 THE COURT: THANK YOU.

10:34AM 18 MR. LEACH: I APOLOGIZE. I MEANT 5206.

10:34AM 19 THE COURT: IS THAT WHAT YOU HAVE IN FRONT OF YOU,

10:34AM 20 MS. SPIVEY?

10:34AM 21 THE WITNESS: YES.

10:34AM 22 THE COURT: ALL RIGHT. THANK YOU.

10:34AM 23 BY MR. LEACH:

10:34AM 24 Q. AND ON PAGE 1, MS. SPIVEY, DO YOU SEE THAT THERE'S TWO

10:34AM 25 ATTACHMENTS TO THE EMAIL?

10:34AM 1 A. YES.

10:34AM 2 Q. I'D LIKE TO DRAW YOUR ATTENTION TO ONE OF THE ATTACHMENTS

10:34AM 3 AND ASK YOU TO LOOK AT PAGE 14.

10:34AM 4 DO YOU RECOGNIZE THIS?

10:34AM 5 A. YES.

10:34AM 6 Q. AND WHAT IS THIS?

10:34AM 7 A. THAT IS THE VALUATION REPORT PREPARED BY AN INDEPENDENT

10:34AM 8 FIRM CALLED ARANCA.

10:35AM 9 Q. YOU SAID AN INDEPENDENT FIRM NAMED ARANCA, OR IS IT ALSO

10:35AM 10 PRONOUNCED ARANCA?

10:35AM 11 A. YEAH.

10:35AM 12 Q. OKAY. AND WHAT DID THERANOS HIRE ARANCA TO DO?

10:35AM 13 A. TO ASK -- OR TO PROVIDE AN ESTIMATED FAIR MARKET VALUE OF

10:35AM 14 THE COMPANY'S STOCK, THE COMPANY'S STOCK.

10:35AM 15 Q. DID YOU HAVE INTERACTIONS WITH ARANCA?

10:35AM 16 A. YES.

10:35AM 17 Q. AND DESCRIBE THE NATURE OF YOUR INTERACTIONS WITH ARANCA.

10:35AM 18 A. SO I PROVIDE THE COMPANY FINANCIAL DATA TO ARANCA SO THAT

10:35AM 19 THEY CAN USE THAT INFORMATION TO PREPARE THE MODEL.

10:35AM 20 Q. OKAY. AND ARANCA WOULD, BASED ON THE INFORMATION YOU WERE

10:35AM 21 GIVING, WOULD GENERATE SOME TYPE OF REPORT FOR THERANOS?

10:35AM 22 A. YES.

10:35AM 23 Q. AND DID YOU USE THAT REPORT IN THE ORDINARY COURSE OF

10:35AM 24 BUSINESS?

10:35AM 25 A. YES.

10:35AM 1 Q. DID YOU -- AND WAS IT KEPT BY THERANOS IN THE ORDINARY
10:35AM 2 COURSE OF BUSINESS?
10:35AM 3 A. YES.
10:35AM 4 Q. AND WAS IT PREPARED BASED ON DATA AND INFORMATION THAT YOU
10:35AM 5 SUPPLIED TO ARANCA SO ARANCA COULD DO ITS WORK?
10:36AM 6 A. YES.
10:36AM 7 Q. AND DID YOU DO YOUR BEST TO PROVIDE ACCURATE INFORMATION
10:36AM 8 TO ARANCA?
10:36AM 9 A. YES.
10:36AM 10 Q. OKAY.
10:36AM 11 YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 5206.
10:36AM 12 MR. COOPERSMITH: OBJECTION, YOUR HONOR. HEARSAY
10:36AM 13 AND RELEVANCE.
10:36AM 14 THE COURT: THANK YOU. IS THIS UNDER 803(6)?
10:36AM 15 MR. LEACH: YES, YOUR HONOR.
10:36AM 16 THE COURT: YES. OBJECTION IS OVERRULED. IT'S
10:36AM 17 ADMITTED. AND IT MAY BE PUBLISHED.
10:36AM 18 (GOVERNMENT'S EXHIBIT 5206 WAS RECEIVED IN EVIDENCE.)
10:36AM 19 MR. LEACH: THANK YOU, YOUR HONOR.
10:36AM 20 MS. WACHS, IF WE CAN ZOOM IN ON THE TOP EMAIL.
10:36AM 21 Q. MS. SPIVEY, THIS SAYS "HI ELIZABETH/SUNNY,
10:36AM 22 "ATTACHED PLEASE FIND THE LATEST 409A REPORT."
10:36AM 23 DO YOU SEE THAT?
10:36AM 24 A. YES.
10:36AM 25 Q. AND 409A IS A REFERENCE TO A PROVISION OF THE INTERNAL

10:36AM 1 REVENUE CODE?

10:36AM 2 A. YES.

10:36AM 3 Q. AND THIS SAYS, "THE VALUE GOES UP TO \$1.56 (FROM \$1.44 IN
10:37AM 4 DECEMBER) DUE TO THE LATEST FUNDING IN FEB AND MARCH 2015. THE
10:37AM 5 PROJECTION IS THE SAME AS THE DECEMBER MODEL."

10:37AM 6 DO YOU SEE THAT?

10:37AM 7 A. YES.

10:37AM 8 Q. THE REFERENCE TO THE DECEMBER MODEL -- ARE THESE ARANCA
10:37AM 9 REPORTS THINGS THERANOS WOULD SOLICIT FROM TIME TO TIME?

10:37AM 10 A. YES.

10:37AM 11 Q. AND SO THERE'S MORE THAN ONE?

10:37AM 12 A. YES.

10:37AM 13 Q. AND IN EACH CASE YOU WOULD PROVIDE INFORMATION TO ARANCA?

10:37AM 14 A. YES.

10:37AM 15 Q. AND WOULD THAT INCLUDE HISTORICAL FINANCIAL INFORMATION?

10:37AM 16 A. YES.

10:37AM 17 Q. AND WOULD THAT INCLUDE PROJECTIONS ABOUT THE COMPANY'S
10:37AM 18 FUTURE PERFORMANCE?

10:37AM 19 A. YES.

10:37AM 20 Q. AND WHERE DID YOU GET THE INFORMATION ABOUT THE COMPANY'S
10:37AM 21 FUTURE PERFORMANCE? IS THAT INFORMATION THAT YOU PREPARED ON
10:37AM 22 YOUR OWN?

10:37AM 23 A. NO. I GOT THIS INFORMATION FROM MS. HOLMES AND
10:37AM 24 MR. BALWANI.

10:38AM 25 Q. AND THE VALUE GOES UP TO \$1.56. IS \$1.56 ARANCA'S

10:38AM 1 ESTIMATION OF THE FAIR MARKET VALUE OF THERANOS SHARES AT THE
10:38AM 2 TIME?
10:38AM 3 A. YES.
10:38AM 4 Q. AND IS THAT WHAT YOU USED TO VALUE THE STOCK OPTIONS?
10:38AM 5 A. YES.
10:38AM 6 Q. AND LET'S LOOK AT THE REPORT, PLEASE. IF WE CAN GO TO
10:38AM 7 PAGE 14.
10:38AM 8 DO YOU SEE THE TITLE, AN ARANCA REPORT, MS. SPIVEY?
10:38AM 9 A. YES.
10:38AM 10 Q. AND THEN BELOW THAT IT SAYS THERANOS INC., FMV OF COMMON
10:38AM 11 STOCK AS OF MARCH 25, 2015.
10:38AM 12 DO YOU SEE THAT?
10:38AM 13 A. YES.
10:38AM 14 Q. AND WHAT DOES FMV STAND FOR?
10:38AM 15 A. FAIR MARKET VALUE.
10:38AM 16 Q. AND THERE'S A DATE BENEATH THAT, 6TH APRIL 2015.
10:38AM 17 IS THAT YOUR UNDERSTANDING OF THE DATE THAT ARANCA
10:38AM 18 PREPARED ITS REPORT OR SUBSTANTIALLY COMPLETED ITS REPORT?
10:38AM 19 A. YES.
10:38AM 20 Q. OKAY. LET'S LOOK AT PAGE 17, PLEASE.
10:39AM 21 AND IF WE CAN ZOOM IN, MS. WACHS, ON THE TOP PORTION OF
10:39AM 22 THIS.
10:39AM 23 DO YOU SEE THE HEADING, ENGAGEMENT OVERVIEW, MS. SPIVEY?
10:39AM 24 A. YES.
10:39AM 25 Q. AND THEN THERE'S A PARAGRAPH 1.1, BACKGROUND.

10:39AM 1 DO YOU SEE THAT?

10:39AM 2 A. YES.

10:39AM 3 Q. AND THIS READS, "ARANCA HAS BEEN ENGAGED BY THERANOS TO
10:39AM 4 CONDUCT VALUATION ANALYSIS OF THE COMPANY AND PREPARE A WRITTEN
10:39AM 5 REPORT TO EXPRESS OUR OPINION ON THE FAIR MARKET VALUE OF ITS
10:39AM 6 COMMON STOCK."

10:39AM 7 DO YOU SEE THAT LANGUAGE?

10:39AM 8 A. YES.

10:39AM 9 Q. AND YOU WERE -- WERE YOU ONE OF THE PRIMARY CONTACTS FOR
10:39AM 10 ARANCA IN CONNECTION WITH ITS PREPARATION OF THIS?

10:39AM 11 A. YES.

10:39AM 12 Q. AND YOU WOULD PROVIDE DATA TO THEM FROM TIME TO TIME?

10:39AM 13 A. YES.

10:39AM 14 Q. OKAY. LET'S LOOK FURTHER BELOW.

10:40AM 15 DO YOU SEE WHERE -- IN THE FIRST BULLET WHERE IT SAYS, "WE
10:40AM 16 UNDERSTAND THIS REPORT AND ITS CONCLUSIONS WOULD BE USED BY THE
10:40AM 17 COMPANY'S BOARD OF DIRECTORS (AND AUTHORIZED BOARD COMMITTEES)
10:40AM 18 SOLELY IN CONNECTION WITH DETERMINING THE EXERCISE PRICE FOR
10:40AM 19 GRANTING OPTIONS TO ITS EMPLOYEES TO COMPLY WITH IRC SECTION
10:40AM 20 409A."

10:40AM 21 DO YOU SEE THAT?

10:40AM 22 A. YES.

10:40AM 23 Q. AND IS THAT YOUR UNDERSTANDING OF THE PURPOSE OF THIS
10:40AM 24 REPORT?

10:40AM 25 A. YES.

10:40AM 1 Q. AND IS THAT HOW YOU USED IT IN CONNECTION WITH YOUR WORK?

10:40AM 2 A. YES.

10:40AM 3 Q. IN THE FOURTH BULLET IT SAYS, "IN PREPARING OUR ANALYSIS,
10:40AM 4 DANISE YAM, CORPORATE CONTROLLER (MANAGEMENT), PROVIDED
10:40AM 5 INFORMATION REGARDING THERANOS'S BUSINESS, PRODUCTS AND
10:40AM 6 SERVICES, OPERATIONS, PAST PERFORMANCE, AND FINANCIAL RESULTS,
10:40AM 7 FINANCIAL CONDITION, INVESTMENTS AND BUDGETS."

10:41AM 8 DO YOU SEE THAT?

10:41AM 9 A. YES.

10:41AM 10 Q. AND IS THAT ACCURATE?

10:41AM 11 A. YES.

10:41AM 12 Q. "ARANCA ASSUMES THE INFORMATION PROVIDED AND
10:41AM 13 REPRESENTATIONS MADE ARE ACCURATE AND RELIABLE, AND FAIRLY
10:41AM 14 REPRESENTS THE FINANCIAL POSITION AND PROSPECTS OF THE COMPANY
10:41AM 15 AS ON THE VALUATION DATE."

10:41AM 16 DO YOU SEE THAT?

10:41AM 17 A. YES.

10:41AM 18 Q. AND YOU DID YOUR BEST TO PROVIDE ACCURATE AND RELIABLE
10:41AM 19 INFORMATION TO ARANCA; IS THAT FAIR?

10:41AM 20 A. YES.

10:41AM 21 Q. LET ME DRAW YOUR ATTENTION TO PAGE -- AND WERE YOU DOING
10:41AM 22 THIS ON YOUR OWN, OR DID YOU GET INFORMATION FROM OTHER
10:41AM 23 SOURCES?

10:41AM 24 A. I GET -- FOR THE HISTORICAL INFORMATION, I GET IT FROM THE
10:41AM 25 THERANOS ACCOUNTING SYSTEM; AND FOR THE PROJECTION PIECE, I GOT

10:41AM 1 THE INFORMATION FROM MR. BALWANI AND ELIZABETH HOLMES. AND
10:41AM 2 BASED ON THE INFORMATION THAT THEY PROVIDE, I PREPARED A
10:41AM 3 FINANCIAL STATEMENT.

10:42AM 4 Q. LET ME DRAW YOUR ATTENTION TO PAGE 19 OF THE EXHIBIT.

10:42AM 5 THE COURT: BEFORE YOU BEGIN EXAMINATION, LET ME
10:42AM 6 JUST -- FOLKS, WHY DON'T YOU STAND UP AND TAKE A STRETCH FOR
10:42AM 7 JUST A MOMENT.

10:42AM 8 (STRETCHING.)

10:42AM 9 THE COURT: THANK YOU, MR. LEACH. SORRY FOR THE
10:42AM 10 INTERRUPTION.

10:42AM 11 MR. LEACH: THANK YOU, LADIES AND GENTLEMEN.

10:42AM 12 Q. MS. SPIVEY, WE PUT ON THE SCREEN PARAGRAPH 1.4, SCOPE OF
10:43AM 13 ANALYSIS.

10:43AM 14 DO YOU SEE THAT?

10:43AM 15 A. YES.

10:43AM 16 Q. AND DO YOU SEE WHERE IT SAYS, "DURING THE COURSE OF OUR
10:43AM 17 VALUATION ANALYSIS, WE HAVE CONDUCTED LIMITED REVIEWS,
10:43AM 18 INQUIRIES, INTERVIEWS, DISCUSSIONS, AND ANALYSES, WHICH, IN OUR
10:43AM 19 OPINION, WERE DEEMED TO BE APPROPRIATE FOR THIS VALUATION
10:43AM 20 ANALYSIS."

10:43AM 21 DO YOU SEE THAT LANGUAGE?

10:43AM 22 A. YES.

10:43AM 23 Q. AND DID THAT INCLUDE DISCUSSIONS AND INTERVIEWS WITH
10:43AM 24 MEMBERS OF THERANOS'S SENIOR MANAGEMENT?

10:43AM 25 A. I WAS THE MAIN CONTACT.

10:43AM 1 Q. OKAY. DO YOU KNOW WHETHER MS. HOLMES OR MR. BALWANI HAD
10:43AM 2 CONTACT WITH ARANCA?

10:43AM 3 A. NOT THAT I WAS AWARE.

10:43AM 4 Q. OKAY. IN PARAGRAPH 2 IT SAYS, "REVIEW OF FINANCIAL
10:43AM 5 STATEMENTS FOR FINANCIAL YEARS DECEMBER 31ST, 2011, THROUGH
10:43AM 6 DECEMBER 31ST, 2014."

10:43AM 7 IS THAT DATA THAT YOU PROVIDED TO ARANCA?

10:43AM 8 A. YES.

10:43AM 9 Q. AND THAT'S FROM THE HISTORICAL FINANCIAL ACCOUNTING
10:43AM 10 RECORDS?

10:43AM 11 A. YES.

10:43AM 12 Q. AND THEN IN 3 IT SAYS, "REVIEW OF FORECASTED FINANCIAL
10:44AM 13 STATEMENTS FOR FINANCIAL YEARS ENDING 2015 THROUGH 2018."

10:44AM 14 IS THAT THE INFORMATION THAT YOU GOT FROM MS. HOLMES AND
10:44AM 15 MR. BALWANI?

10:44AM 16 A. YES.

10:44AM 17 Q. LET ME DRAW YOUR ATTENTION, PLEASE, TO PARAGRAPH, OR
10:44AM 18 PAGE 67. I'M SORRY, PAGE 42.

10:44AM 19 DO YOU SEE PARAGRAPH 4.3, MS. SPIVEY?

10:44AM 20 A. YES.

10:44AM 21 Q. AND THIS IS TITLED INCOME STATEMENT?

10:44AM 22 A. YES.

10:44AM 23 Q. AND IT SAYS, "BASED ON THE REVENUE AND EXPENSE PROJECTIONS
10:45AM 24 BELOW IS THE ESTIMATED INCOME STATEMENT FOR THERANOS."

10:45AM 25 DO YOU SEE THAT?

10:45AM 1 A. YES.

10:45AM 2 Q. OKAY. AND THEN THERE'S A LINE FOR REVENUES.

10:45AM 3 DO YOU SEE THAT?

10:45AM 4 A. YES.

10:45AM 5 Q. AND THERE'S A LINE FY-F, FY-F ABOVE SOME OF THE NUMBERS.

10:45AM 6 DO YOU KNOW WHAT FY-F REFERS TO?

10:45AM 7 A. FOUR-YEAR FORECAST.

10:45AM 8 Q. SO THE F STANDS FOR FORECASTED?

10:45AM 9 A. YES.

10:45AM 10 Q. AND SO THESE ARE NOT NUMBERS THAT THE COMPANY HAS

10:45AM 11 ACCOMPLISHED, THIS IS SOMETHING IN THE FUTURE?

10:45AM 12 A. YES.

10:45AM 13 Q. OKAY. AND THERE'S A PROJECTION FOR 2015, DECEMBER 15TH,

10:45AM 14 \$113,452.

10:45AM 15 DO YOU SEE THAT?

10:45AM 16 A. YES.

10:45AM 17 Q. IS THAT A NUMBER YOU PROVIDED TO ARANCA?

10:45AM 18 A. YES.

10:45AM 19 Q. AND WHERE DID YOU GET THAT NUMBER?

10:46AM 20 A. EITHER FROM MS. HOLMES OR MR. BALWANI.

10:46AM 21 Q. AND THEN THERE ARE SOME NUMBERS TO THE RIGHT, 223 MILLION

10:46AM 22 FOR 2016, 323 MILLION FOR 2017, AND 503 MILLION FOR 2018.

10:46AM 23 DO YOU SEE THAT?

10:46AM 24 A. YES.

10:46AM 25 Q. AND WHERE DID YOU GET THOSE NUMBERS?

10:46AM 1 A. IT'S EITHER FROM MS. HOLMES OR MR. BALWANI.

10:46AM 2 Q. OKAY. LET ME DRAW YOUR ATTENTION TO PAGE 67.

10:46AM 3 IF WE CAN ZOOM IN ON THE TOP PART, MS. WACHS.

10:46AM 4 DO YOU SEE WHERE IT SAYS 7.2 HISTORICAL FINANCIALS?

10:46AM 5 A. YES.

10:46AM 6 Q. AND THERE'S AN INCOME STATEMENT FOR THE TIME PERIODS 2011,

10:46AM 7 2012, 2013, 2014.

10:47AM 8 DO YOU SEE THAT?

10:47AM 9 A. YES.

10:47AM 10 Q. AND IS THIS DATA THAT YOU PROVIDED TO ARANCA?

10:47AM 11 A. YES.

10:47AM 12 Q. AND WE TALKED A LITTLE BIT ABOUT 2011, 2012, AND 2013.

10:47AM 13 I WANT TO FOCUS ON THE COLUMN 2014. THERE'S A LINE FY-A.

10:47AM 14 DO YOU SEE THAT?

10:47AM 15 A. YES.

10:47AM 16 Q. AND WHAT DOES THE "A" STAND FOR?

10:47AM 17 A. ACTUAL.

10:47AM 18 Q. SO THIS IS WHAT THERANOS ACTUALLY ACCOMPLISHED IN THAT

10:47AM 19 TIME PERIOD?

10:47AM 20 A. YES.

10:47AM 21 Q. AND THE NUMBER FOR REVENUE IS 150.

10:47AM 22 DO YOU SEE THAT?

10:47AM 23 A. YES.

10:47AM 24 Q. AND IS THAT 150,000?

10:47AM 25 A. YES.

10:47AM 1 Q. AND TO YOUR KNOWLEDGE, IS THAT THE REVENUE THAT THERANOS
10:47AM 2 ACHIEVED FOR THAT TIME PERIOD?

10:47AM 3 A. YES.

10:47AM 4 Q. AND TO THE RIGHT THERE'S MARCH 15, TWO-MONTH A.
10:47AM 5 DO YOU SEE THAT?

10:47AM 6 A. YES.

10:47AM 7 Q. AND IS THAT THE ACTUAL REVENUE FOR THE FIRST TWO MONTHS OF
10:47AM 8 THE TIME PERIOD 2015?

10:47AM 9 A. YES.

10:47AM 10 Q. AND THERE'S A NUMBER 14 THERE. IS THAT NUMBER \$14,000?

10:48AM 11 A. YES.

10:48AM 12 Q. OKAY. WE CAN TAKE THAT DOWN, MS. WACHS.
10:48AM 13 I WANT TO FOCUS ON THE TIME PERIOD 2015, MS. SPIVEY, AND
10:48AM 14 DRAW YOUR ATTENTION TO EXHIBIT 3233, WHICH SHOULD BE IN
10:48AM 15 VOLUME 1.

10:48AM 16 DO YOU HAVE EXHIBIT 3233 IN FRONT OF YOU, MS. SPIVEY?

10:48AM 17 A. YES.

10:48AM 18 Q. AND IS THIS A TRUE AND CORRECT COPY OF THERANOS'S TAX
10:48AM 19 RETURN FOR THE YEAR ENDED 2015?

10:48AM 20 A. YES.

10:48AM 21 Q. AND DID YOU PROVIDE INFORMATION TO THE TAX ACCOUNTANTS SO
10:49AM 22 THAT THEY COULD PREPARE THIS ON THERANOS'S BEHALF?

10:49AM 23 A. YES.

10:49AM 24 Q. AND DID YOU KEEP THIS IN THE REGULAR COURSE OF BUSINESS?

10:49AM 25 A. YES.

10:49AM 1 Q. AND WAS IT PREPARED BY INFORMATION DRAWN FROM YOUR
10:49AM 2 ACCOUNTING SYSTEM?

10:49AM 3 A. YES.

10:49AM 4 Q. AND TO THE BEST OF YOUR KNOWLEDGE, DOES IT ACCURATELY
10:49AM 5 REPRESENT THE COMPANY'S FINANCIAL CONDITION AS OF 2015?

10:49AM 6 A. YES.

10:49AM 7 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
10:49AM 8 EXHIBIT 3233.

10:49AM 9 MR. COOPERSMITH: OBJECTION, YOUR HONOR. HEARSAY.
10:49AM 10 SHE DIDN'T PREPARE IT.

10:49AM 11 THE COURT: OVERRULED. 803(6). AND IT MAY BE
10:49AM 12 PUBLISHED.

10:49AM 13 (GOVERNMENT'S EXHIBIT 3233 WAS RECEIVED IN EVIDENCE.)
10:49AM 14 BY MR. LEACH:

10:49AM 15 Q. LET ME DRAW YOUR ATTENTION, MS. SPIVEY, TO THE FIRST PAGE
10:49AM 16 OF THE DOCUMENT. UP AT THE TOP IT SAYS MOSS ADAMS LLP.

10:49AM 17 DO YOU SEE THAT?

10:49AM 18 A. YES.

10:49AM 19 Q. AND WHO IS MOSS ADAMS LLP?

10:49AM 20 A. THAT'S THE ACCOUNTING FIRM THAT PREPARED THE INCOME TAX
10:50AM 21 RETURN FOR THERANOS.

10:50AM 22 Q. OKAY. AND YOU WORKED CLOSELY WITH THEM IN PROVIDING
10:50AM 23 INFORMATION SO THAT THEY COULD PREPARE THIS?

10:50AM 24 A. YES.

10:50AM 25 Q. OKAY. AND DO YOU SEE THAT IT SAYS THERANOS INC. AND

10:50AM 1 SUBSIDIARY.

10:50AM 2 IT GOES ON FOR THE YEAR DECEMBER 31ST, 2015.

10:50AM 3 DO YOU SEE THAT?

10:50AM 4 A. YES.

10:50AM 5 Q. AND LET'S LOOK AT PAGE 4.

10:50AM 6 DO YOU SEE THE HEADING U.S. CORPORATION INCOME TAX RETURN

10:50AM 7 AT THE TOP?

10:50AM 8 A. YES.

10:50AM 9 Q. AND THEN IN PARAGRAPH, OR THE FIRST TOP OF THIS THERE'S,

10:50AM 10 TO THE LEFT, THE WORD INCOME WRITTEN PERPENDICULAR TO SOME OF

10:50AM 11 THE OTHER TEXTS.

10:50AM 12 DO YOU SEE THAT? LINES 1 THROUGH 11. I'M LOOKING AT THE

10:50AM 13 FAR LEFT WHERE IT SAYS INCOME.

10:50AM 14 A. YES.

10:50AM 15 Q. OKAY. AND IN LINE 1C, OR 1A, IT SAYS GROSS RECEIPTS OR

10:51AM 16 SALES.

10:51AM 17 DO YOU SEE THAT?

10:51AM 18 A. YES.

10:51AM 19 Q. AND WHAT WAS THE AMOUNT OF GROSS RECEIPTS OR SALES THAT

10:51AM 20 THERANOS REPORTED TO THE I.R.S. FOR 2015?

10:51AM 21 A. \$429,210.

10:51AM 22 Q. AND IS GROSS RECEIPTS OR SALES, DOES THAT HAVE SOME

10:51AM 23 RELATION TO REVENUE?

10:51AM 24 A. YES.

10:51AM 25 Q. HOW SO?

10:51AM 1 A. UM, THAT'S THE REVENUE FOR TAX PURPOSES.

10:51AM 2 Q. OKAY. AND THEN IN THE LINE NUMBER 5, INTEREST, IT APPEARS

10:51AM 3 THAT THERE'S AN ENTRY FOR \$1,515,738.

10:51AM 4 DO YOU SEE THAT?

10:51AM 5 A. YES.

10:51AM 6 Q. AND IS THAT THE AMOUNT OF INTEREST INCOME THAT THERANOS

10:51AM 7 REPORTED TO THE I.R.S.?

10:51AM 8 A. YES.

10:51AM 9 Q. OKAY. AND THEN IN LINE 11, DO YOU SEE TOTAL INCOME?

10:51AM 10 A. YES.

10:51AM 11 Q. AND THE TOTAL INCOME THAT THERANOS REPORTED FOR 2015 WAS

10:51AM 12 \$1,944,948.

10:52AM 13 DO YOU SEE THAT?

10:52AM 14 A. YES.

10:52AM 15 Q. OKAY. LET'S LOOK AT PAGE 8.

10:52AM 16 DO YOU SEE THE HEADING SCHEDULE L BALANCE SHEETS PER BOOKS

10:52AM 17 UP AT THE TOP?

10:52AM 18 A. YES.

10:52AM 19 Q. AND I WANT TO FOCUS ON THE LINE FOR RETAINED EARNINGS,

10:52AM 20 LINE 25.

10:52AM 21 WHAT IS RETAINED EARNINGS?

10:52AM 22 A. IT'S THE SAME AS ACCUMULATED DEFICITS. IT'S THE LOSSES

10:52AM 23 THAT THE COMPANY INCURRED FOR ITS ENTIRE EXISTENCE.

10:52AM 24 Q. SO FOR YOUR FINANCIAL STATEMENT, YOU USED THE WORD

10:52AM 25 "ACCUMULATED DEFICIT," AND IN THE TAX RETURN IT'S "RETAINED

10:52AM 1 EARNINGS"?

10:52AM 2 A. YES.

10:52AM 3 Q. AND WHAT WAS THE AMOUNT OF RETAINED EARNINGS FOR THE END
10:52AM 4 OF 2015?

10:53AM 5 A. IT'S ABOUT 585 MILLION.

10:53AM 6 Q. OKAY. THAT'S THE TOTAL LOSS OF THE COMPANY THROUGHOUT ITS
10:53AM 7 EXISTENCE?

10:53AM 8 A. YES.

10:53AM 9 Q. OKAY. WE'VE TALKED -- WE'VE BEEN TALKING, MS. SPIVEY,
10:53AM 10 ABOUT THE TOTAL REVENUE THAT THERANOS HAD FOR PARTICULAR TIME
10:53AM 11 PERIODS.

10:53AM 12 I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE TYPES OF
10:53AM 13 REVENUE THAT IT HAD OR THE SOURCE OF REVENUE THAT IT HAD.

10:53AM 14 DID THERANOS RECORD ANY REVENUE FROM BUSINESS WITH
10:53AM 15 HOSPITALS?

10:53AM 16 A. NO.

10:53AM 17 Q. AND DID THERANOS RECORD ANY REVENUE FROM BUSINESS WITH
10:53AM 18 PHYSICIAN OFFICES?

10:53AM 19 A. NO.

10:53AM 20 Q. DID THERANOS EVER RECORD ANY REVENUE FROM A RELATIONSHIP
10:53AM 21 WITH SAFEWAY?

10:53AM 22 A. NO.

10:53AM 23 Q. DID THERANOS EVER RECORD ANY REVENUE FROM A RELATIONSHIP
10:53AM 24 WITH WALGREENS?

10:54AM 25 A. NO.

10:54AM 1 Q. WHAT WAS THE PRIMARY SOURCE OF REVENUE THAT WE'VE BEEN
10:54AM 2 LOOKING AT SO FAR?

10:54AM 3 A. FROM STUDIES WITH PHARMACEUTICAL COMPANIES.

10:54AM 4 Q. OKAY. LET ME DRAW -- LET ME DRAW YOUR ATTENTION TO
10:54AM 5 EXHIBIT 7753, WHICH SHOULD BE IN VOLUME 2.

10:54AM 6 IS THIS A TRUE AND CORRECT COPY OF AN EMAIL THAT YOU SENT
10:54AM 7 IN OR ABOUT NOVEMBER OF 2016?

10:55AM 8 A. YES.

10:55AM 9 Q. AND IN THE SUBSTANCE IT SAYS, "ATTACHED ARE CERTAIN
10:55AM 10 DOCUMENTS."

10:55AM 11 DO YOU SEE THAT?

10:55AM 12 A. YES. YES.

10:55AM 13 Q. OKAY. DO THE ATTACHMENTS REPRESENT CONTRACTS THAT
10:55AM 14 THERANOS -- INCLUDE CONTRACTS THAT THERANOS HAD WITH
10:55AM 15 PHARMACEUTICAL COMPANIES?

10:55AM 16 A. YES.

10:55AM 17 Q. AND DOES THE ATTACHMENT INCLUDE A SUMMARY THAT YOU
10:55AM 18 PREPARED SUMMARIZING RECEIPTS THAT THERANOS HAD FROM VARIOUS
10:55AM 19 PHARMACEUTICAL COMPANIES?

10:55AM 20 A. YES.

10:55AM 21 Q. AND DID YOU PREPARE THAT BASED ON INFORMATION FROM
10:55AM 22 THERANOS'S BOOKS AND RECORDS?

10:55AM 23 A. YES.

10:55AM 24 Q. AND DID YOU DO YOUR BEST TO PREPARE AN ACCURATE SUMMARY?

10:55AM 25 A. YES.

10:55AM 1 Q. OKAY.

10:55AM 2 YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 7753.

10:55AM 3 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:55AM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:55AM 5 (DEFENDANT'S EXHIBIT 7753 WAS RECEIVED IN EVIDENCE.)

10:56AM 6 MR. LEACH: MS. WACHS, IF WE CAN DRAW UP THE SECOND

10:56AM 7 ATTACHMENT IN NATIVE FORMAT.

10:56AM 8 Q. MS. SPIVEY, IS THIS A TRUE AND CORRECT COPY OF A SUMMARY

10:56AM 9 THAT YOU PREPARED OF THERANOS'S RELATIONSHIP WITH

10:56AM 10 PHARMACEUTICAL COMPANIES?

10:56AM 11 A. YES.

10:56AM 12 Q. AND IS IT YOUR BEST EFFORT TO REPORT RECEIPTS IN DIFFERENT

10:56AM 13 PERIODS OF TIME?

10:56AM 14 A. YES.

10:56AM 15 Q. OKAY. I WANT TO START WITH COLUMN A GOING FROM THE

10:56AM 16 BOTTOM. THERE'S SCHERING-PLOUGH RESEARCH.

10:56AM 17 DO YOU SEE THAT?

10:56AM 18 A. YES.

10:56AM 19 Q. IS THAT ONE OF THE PHARMACEUTICAL COMPANIES THAT THERANOS

10:56AM 20 RECEIVED MONEY FROM?

10:56AM 21 A. YES.

10:56AM 22 Q. AND GOING UP, PFIZER INC.

10:56AM 23 DO YOU SEE THAT?

10:56AM 24 A. YES.

10:56AM 25 Q. IS THAT ANOTHER ONE OF THE PHARMACEUTICAL COMPANIES THAT

10:57AM 1 THERANOS DID SOME BUSINESS WITH?

10:57AM 2 A. YES.

10:57AM 3 Q. AND GOING UP BETWEEN 11 AND 6, ARE THOSE ADDITIONAL

10:57AM 4 PHARMACEUTICAL COMPANIES?

10:57AM 5 A. YES.

10:57AM 6 Q. OKAY. THERE'S A LINE FOR AMERICAN BURN ASSOCIATION.

10:57AM 7 DO YOU SEE THAT?

10:57AM 8 A. YES.

10:57AM 9 Q. AND WHAT DOES THAT REFER TO?

10:57AM 10 A. WHAT DOES THAT REFER TO? IT'S ANOTHER CUSTOMER.

10:57AM 11 Q. OKAY. IN ROW 4, AS WE GO TO THE RIGHT, THERE'S SOME

10:57AM 12 NUMBERS, 2007/5, 2008/8, 2008/10.

10:57AM 13 DO YOU SEE THAT?

10:57AM 14 A. YES.

10:57AM 15 Q. AND WHAT DO THOSE NUMBERS REPRESENT?

10:57AM 16 A. THE YEAR AND THE MONTH.

10:57AM 17 Q. THE YEAR AND THE MONTH THAT THE MONEY WAS RECEIVED?

10:57AM 18 A. YES.

10:57AM 19 Q. OKAY. SO DOES THIS MEAN THAT IN MAY OF 2007 THERANOS

10:58AM 20 RECEIVED \$500,000 FROM PFIZER?

10:58AM 21 A. YES.

10:58AM 22 Q. AND THEN IN LINE 14 THERE'S A GRAND TOTAL.

10:58AM 23 DO YOU SEE THAT?

10:58AM 24 A. YES.

10:58AM 25 Q. IS THAT THE TOTAL AMOUNT OF MONEY THERANOS RECEIVED IN

10:58AM 1 THAT TIME PERIOD?

10:58AM 2 A. YES.

10:58AM 3 Q. OKAY. LET'S ZOOM TO THE RIGHT, MS. WACHS, IF WE COULD.

10:58AM 4 LET'S INCLUDE COLUMN M IF WE CAN.

10:58AM 5 DO YOU SEE COLUMN M HAS 2009/12?

10:58AM 6 A. YES.

10:58AM 7 Q. IS THAT DECEMBER OF 2009?

10:58AM 8 A. YES.

10:58AM 9 Q. AND THIS REFLECTS THAT THERANOS RECEIVED \$250,000 FROM

10:58AM 10 CELGENE IN THAT TIME PERIOD?

10:58AM 11 A. YES.

10:58AM 12 Q. OKAY. AND AS WE MOVE TO THE RIGHT, DO YOU SEE THE NUMBERS

10:58AM 13 GOING TO 2010, 2011, AND THEN IN COLUMN V UP TO 2014?

10:58AM 14 DO YOU SEE THAT?

10:59AM 15 A. YES.

10:59AM 16 Q. DOES THAT MEAN THAT THERANOS RECEIVED NO MONEY FROM

10:59AM 17 PHARMACEUTICAL COMPANIES BETWEEN 2011 -- JUNE OF 2011 AND

10:59AM 18 OCTOBER OF 2014?

10:59AM 19 A. YES.

10:59AM 20 Q. AND IT RECEIVED NO MONEY AFTER OCTOBER OF 2014?

10:59AM 21 A. CORRECT.

10:59AM 22 Q. OKAY. AND IN COLUMN U THERE'S A GRAND TOTAL -- OR W,

10:59AM 23 THERE'S A COLUMN GRAND TOTAL.

10:59AM 24 DO YOU SEE THAT?

10:59AM 25 A. YES.

10:59AM 1 Q. AND WHAT DOES THAT COLUMN REPRESENT?

10:59AM 2 A. THAT'S THE TOTAL MONEY THAT THERANOS RECEIVED FROM EACH OF
10:59AM 3 THESE CUSTOMERS.

10:59AM 4 Q. AND WITH THE EXCEPTION OF THE \$38,000 IT RECEIVED FROM THE
10:59AM 5 AMERICAN BURN ASSOCIATION IN OCTOBER OF 2014, WOULD ALL OF THAT
10:59AM 6 MONEY HAVE BEEN 2011 AND BEFORE?

10:59AM 7 A. YES.

10:59AM 8 Q. OKAY.

10:59AM 9 YOUR HONOR, I SEE IT'S 11:00 O'CLOCK. THIS MIGHT BE A
11:00AM 10 CONVENIENT TIME FOR A BREAK.

11:00AM 11 THE COURT: ALL RIGHT. LET'S TAKE OUR MORNING
11:00AM 12 BREAK, LADIES AND GENTLEMEN. LET'S TAKE OUR MORNING BREAK OF
11:00AM 13 30 MINUTES.

11:00AM 14 (RECESS FROM 11:00 A.M. UNTIL 11:34 A.M.)

11:34AM 15 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

11:34AM 16 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

11:34AM 17 OUR JURY AND ALTERNATES ARE PRESENT.

11:34AM 18 MS. SPIVEY, IF YOU COULD RETURN TO THE STAND. THANK YOU.

11:35AM 19 MR. LEACH, YOU'D LIKE TO CONTINUE YOUR EXAMINATION?

11:35AM 20 PLEASE.

11:35AM 21 BY MR. LEACH:

11:35AM 22 Q. GOOD MORNING, AGAIN, MS. SPIVEY.

11:35AM 23 WOULD YOU PLEASE TURN IN YOUR BINDER NUMBER 2 TO WHAT HAS
11:35AM 24 BEEN MARKED 5780.

11:35AM 25 THIS SHOULD BE IN VOLUME 2. DO YOU HAVE 5780 IN FRONT OF

11:35AM 1 YOU?

11:35AM 2 A. YES.

11:35AM 3 Q. AND IS THIS A TRUE AND CORRECT COPY OF A BANK STATEMENT
11:35AM 4 FROM COMERICA BANK FROM THE TIME PERIOD AUGUST 1ST, 2013, TO
11:35AM 5 AUGUST 31ST, 2013?

11:35AM 6 A. YES.

11:35AM 7 Q. AND THERANOS MAINTAINED A CHECKING ACCOUNT WITH COMERICA
11:36AM 8 DURING THIS TIME PERIOD?

11:36AM 9 A. YES.

11:36AM 10 Q. AND DID THERANOS MAINTAIN BANK RECORDS SUCH AS THIS DURING
11:36AM 11 THE ORDINARY COURSE OF BUSINESS?

11:36AM 12 A. YES.

11:36AM 13 Q. AND DID YOU USE THE DATA IN HERE TO PREPARE THERANOS'S
11:36AM 14 FINANCIAL STATEMENTS AND OTHER ACCOUNTING DOCUMENTS?

11:36AM 15 A. YES.

11:36AM 16 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
11:36AM 17 EXHIBIT 5780.

11:36AM 18 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:36AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:36AM 20 (GOVERNMENT'S EXHIBIT 5780 WAS RECEIVED IN EVIDENCE.)

11:36AM 21 MR. LEACH: AND LET'S START WITH PAGE 1, IF WE
11:36AM 22 COULD, MS. WACHS.

11:36AM 23 THANK YOU.

11:36AM 24 Q. DO YOU SEE THE NAME THERANOS INC. CHECKING ACCOUNT,
11:36AM 25 1601 SOUTH CALIFORNIA AVENUE IN THE UPPER RIGHT-HAND CORNER,

11:36AM 1 MS. SPIVEY?

11:36AM 2 A. YES.

11:36AM 3 Q. AND THAT WAS THERANOS'S HEADQUARTERS AT THE TIME?

11:36AM 4 A. YES.

11:36AM 5 Q. AND DO YOU SEE THIS IS A STATEMENT FOR THE TIME PERIOD

11:36AM 6 AUGUST OF 2013 OVER ON THE RIGHT?

11:37AM 7 A. YES.

11:37AM 8 Q. AND THERE'S A BEGINNING BALANCE OF \$6,029,663.58?

11:37AM 9 A. YES.

11:37AM 10 Q. AND I WANT TO DRAW YOUR ATTENTION TO SOME OF THE DEPOSITS

11:37AM 11 FOR THIS TIME PERIOD.

11:37AM 12 IF WE CAN LOOK AT PAGE 2, PLEASE. AND IF WE CAN ZOOM IN

11:37AM 13 UP ON THE TOP.

11:37AM 14 DO YOU SEE, MS. SPIVEY, THAT ON AUGUST 2ND THERE'S A

11:37AM 15 \$2 MILLION ENTRY FOR A WIRE ASSOCIATED WITH RICHARD M. KOVA?

11:37AM 16 DO YOU SEE THAT?

11:37AM 17 A. YES.

11:37AM 18 Q. AND WAS SOMEONE NAMED RICHARD KOVACEVICH A MEMBER OF

11:37AM 19 THERANOS'S BOARD OF DIRECTORS AT THE TIME?

11:37AM 20 A. YES.

11:37AM 21 Q. AND DO YOU BELIEVE THAT TO BE AN INVESTMENT BY

11:37AM 22 MR. KOVACEVICH?

11:37AM 23 A. YES.

11:37AM 24 Q. AND THERE'S ALSO A WIRE BENEATH THAT FOR 20 MILLION FROM

11:38AM 25 THERANOS INC.

11:38AM 1 DO YOU SEE THAT?

11:38AM 2 A. YES.

11:38AM 3 Q. IS \$20 MILLION THE AMOUNT OF MONEY THAT THERANOS

11:38AM 4 TRANSFERRED FROM ITS FIDELITY ACCOUNT IN ORDER TO REFUND MONEY

11:38AM 5 TO ONE OF THE INSURANCE COMPANIES?

11:38AM 6 A. I BELIEVE SO.

11:38AM 7 Q. OKAY. LET'S LOOK AT PAGE 8. EXCUSE ME. PAGE 9.

11:38AM 8 AND I WANT TO FOCUS ON SOME OF THE ELECTRONIC WITHDRAWALS

11:38AM 9 FROM THIS TIME PERIOD.

11:38AM 10 DO YOU SEE ABOUT A THIRD OF THE WAY DOWN ON AUGUST 21ST

11:38AM 11 THERE'S A NEGATIVE ENTRY FOR \$18,500,000?

11:38AM 12 A. YES.

11:38AM 13 Q. OKAY. AND THAT'S ASSOCIATED WITH A WIRE TO BLUE CROSS,

11:38AM 14 AND.

11:38AM 15 DO YOU SEE THAT?

11:38AM 16 A. YES.

11:38AM 17 Q. AND DO YOU BELIEVE THAT TO BE THE \$18 MILLION REFUND THAT

11:38AM 18 WE WERE LOOKING AT IN THE PRIOR EXHIBIT?

11:38AM 19 A. YES.

11:38AM 20 Q. AND WAS BLUE CROSS, BLUE SHIELD OF NORTH CAROLINA ONE OF

11:39AM 21 THE INSURANCE COMPANIES THAT THERANOS HAD RECEIVED MONEY FROM?

11:39AM 22 A. YES.

11:39AM 23 Q. LET ME NEXT DRAW YOUR ATTENTION TO EXHIBIT 5781.

11:39AM 24 IS THIS A COPY OF A STATEMENT FROM COMERICA FOR THE

11:39AM 25 TIME -- I'M SORRY.

11:39AM 1 DO YOU HAVE THAT IN FRONT OF YOU?

11:39AM 2 A. YES.

11:39AM 3 Q. OKAY. IS THIS A COPY OF A STATEMENT FOR THERANOS'S
11:39AM 4 CHECKING ACCOUNT FOR THE TIME PERIOD SEPTEMBER 1ST, 2013,
11:39AM 5 THROUGH SEPTEMBER 30TH, 2013?

11:39AM 6 A. YES.

11:39AM 7 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
11:39AM 8 EXHIBIT 5781.

11:39AM 9 MR. COOPERSMITH: NO OBJECTION.

11:39AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:39AM 11 (GOVERNMENT'S EXHIBIT 5781 WAS RECEIVED IN EVIDENCE.)

11:40AM 12 BY MR. LEACH:

11:40AM 13 Q. MS. SPIVEY, IF I COULD DRAW YOUR ATTENTION TO PAGE 2, AND
11:40AM 14 SPECIFICALLY THE TOP PART OF THE DOCUMENT UNDER ELECTRONIC
11:40AM 15 DEPOSITS THIS STATEMENT PERIOD.

11:40AM 16 DO YOU SEE THE ENTRY FOR \$7 MILLION, MS. SPIVEY?

11:40AM 17 A. YES.

11:40AM 18 Q. AND THAT'S FROM THERANOS INC.?

11:40AM 19 A. YES.

11:40AM 20 Q. IS THAT MONEY THERANOS IS TRANSFERRING BETWEEN ITS
11:40AM 21 DIFFERENT ACCOUNTS?

11:40AM 22 A. YES.

11:40AM 23 Q. OKAY. BENEATH THAT THERE'S AN ENTRY OF 15 MILLION FOR
11:40AM 24 PEER VENTURES.

11:40AM 25 DO YOU SEE THAT?

11:40AM 1 A. YES.

11:40AM 2 Q. AND DO YOU RECOGNIZE THE NAME PEER VENTURES?

11:40AM 3 A. YES.

11:40AM 4 Q. AND WHAT IS THAT?

11:40AM 5 A. IT'S AN INVESTOR.

11:40AM 6 Q. DO YOU BELIEVE THAT TO BE AN INVESTMENT BY PEER VENTURES?

11:40AM 7 A. YES.

11:40AM 8 Q. AND THEN BENEATH THAT THERE'S TWO ENTRIES BY

11:40AM 9 LUCAS VENTURE.

11:40AM 10 DO YOU SEE THAT?

11:40AM 11 A. YES.

11:40AM 12 Q. AND WHAT IS LUCAS VENTURE?

11:40AM 13 A. IT'S ANOTHER INVESTOR.

11:41AM 14 Q. AND DO YOU BELIEVE THESE AMOUNTS TO BE INVESTMENTS IN

11:41AM 15 THERANOS?

11:41AM 16 A. YES.

11:41AM 17 Q. OKAY. IF YOU COULD TURN IN YOUR BINDER TO 5783.

11:41AM 18 IS THIS A TRUE AND CORRECT COPY OF A STATEMENT FROM

11:41AM 19 COMERICA FOR THE TIME PERIOD DECEMBER OF 2013?

11:41AM 20 A. YES.

11:41AM 21 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

11:41AM 22 EXHIBIT 5783.

11:41AM 23 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:41AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:41AM 25 (GOVERNMENT'S EXHIBIT 5783 WAS RECEIVED IN EVIDENCE.)

11:41AM 1 BY MR. LEACH:

11:41AM 2 Q. AND LET ME DRAW YOUR ATTENTION TO PAGE 2, MS. SPIVEY, AND

11:41AM 3 WE CAN ZOOM IN ON THE PORTION FOR ELECTRONIC DEPOSITS.

11:41AM 4 I DRAW YOUR ATTENTION TO THE AMOUNT \$99,990 FOR

11:42AM 5 DECEMBER 30TH.

11:42AM 6 DO YOU SEE THAT?

11:42AM 7 A. YES.

11:42AM 8 Q. AND THIS APPEARS TO BE ASSOCIATED WITH ALAN JAY EISEN.

11:42AM 9 DO YOU SEE THAT?

11:42AM 10 A. YES.

11:42AM 11 Q. AND ARE YOU FAMILIAR WITH SOMEONE NAMED ALAN EISENMAN?

11:42AM 12 A. YES.

11:42AM 13 Q. AND WAS HE AN INVESTOR IN THERANOS?

11:42AM 14 A. YES.

11:42AM 15 Q. AND DO YOU BELIEVE THIS TO MEMORIALIZE AN INVESTMENT BY

11:42AM 16 MR. EISENMAN IN THERANOS?

11:42AM 17 A. YES.

11:42AM 18 Q. AND BENEATH THAT THERE'S A REFERENCE TO BLACK DIAMOND ON

11:42AM 19 DECEMBER 31ST FOR \$5,349,900.

11:42AM 20 DO YOU SEE THAT?

11:42AM 21 A. YES.

11:42AM 22 Q. AND ARE YOU FAMILIAR WITH THE NAME BLACK DIAMOND?

11:42AM 23 A. YES.

11:42AM 24 Q. IS THAT ANOTHER INVESTOR IN THERANOS?

11:42AM 25 A. YES.

11:42AM 1 Q. MS. SPIVEY, WOULD YOU MIND PULLING THE MICROPHONE A LITTLE
11:42AM 2 CLOSER TO YOU JUST SO WE CAN MAKE SURE THAT BOTH YOU AND ME ARE
11:42AM 3 HEARD? THANK YOU SO MUCH.

11:42AM 4 AND THEN THERE'S, BENEATH THAT, AN ENTRY FOR 4,875,000
11:42AM 5 RELATED TO HALL PHOENIX?

11:43AM 6 DO YOU SEE THAT?

11:43AM 7 A. YES.

11:43AM 8 Q. ARE YOU FAMILIAR WITH HALL PHOENIX?

11:43AM 9 A. YES.

11:43AM 10 Q. IS THAT ANOTHER INVESTOR IN THERANOS?

11:43AM 11 A. YES.

11:43AM 12 Q. AND THEN THERE'S A \$3 MILLION ENTRY FOR PEER VENTURES.

11:43AM 13 DO YOU SEE THAT?

11:43AM 14 A. YES.

11:43AM 15 Q. AND DO YOU BELIEVE THAT TO BE THE SAME PEER VENTURES THAT
11:43AM 16 WE SAW PREVIOUSLY?

11:43AM 17 A. YES.

11:43AM 18 Q. PLEASE LOOK AT THE NEXT TAB, 5784.

11:43AM 19 IS THIS A TRUE AND CORRECT COPY OF A COMERICA BANK
11:43AM 20 STATEMENT FOR THERANOS'S CHECKING ACCOUNT FOR THE TIME PERIOD
11:43AM 21 JANUARY 2014?

11:43AM 22 A. YES.

11:43AM 23 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
11:43AM 24 EXHIBIT 5784.

11:43AM 25 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:43AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:43AM 2 (GOVERNMENT'S EXHIBIT 5784 WAS RECEIVED IN EVIDENCE.)

11:43AM 3 BY MR. LEACH:

11:43AM 4 Q. MS. YAM, OR MS. SPIVEY, I DRAW YOUR ATTENTION TO PAGE 2.

11:44AM 5 THERE'S AN ENTRY ON JANUARY 7TH FOR \$75 MILLION.

11:44AM 6 DO YOU SEE THAT?

11:44AM 7 A. YES.

11:44AM 8 Q. AND THIS APPEARS TO BE A WIRE RELATED TO WALGREENS COMPA.

11:44AM 9 DO YOU SEE THAT?

11:44AM 10 A. YES.

11:44AM 11 Q. AND DO YOU BELIEVE THIS TO BE MONEY RECEIVED FROM

11:44AM 12 WALGREENS?

11:44AM 13 A. YES.

11:44AM 14 Q. OKAY. YOU TESTIFIED EARLIER THAT THERANOS NEVER

11:44AM 15 RECOGNIZED REVENUE FROM ITS RELATIONSHIP WITH WALGREENS.

11:44AM 16 A. CORRECT.

11:44AM 17 Q. OKAY. BUT IT'S RECEIVING MONEY HERE FROM WALGREENS. CAN

11:44AM 18 YOU EXPLAIN WHY THERANOS NEVER RECOGNIZED REVENUE FROM

11:44AM 19 WALGREENS?

11:44AM 20 MR. COOPERSMITH: YOUR HONOR, 602.

11:44AM 21 THE COURT: OVERRULED.

11:44AM 22 THE WITNESS: SO MY UNDERSTANDING WITH THE BUSINESS

11:44AM 23 ARRANGEMENT IS THAT THERANOS NEEDS TO PERFORM SOME BUSINESS

11:44AM 24 ACTIVITIES BEFORE THEY EARN THAT MONEY, AND BECAUSE THERANOS

11:44AM 25 HAS NOT PERFORMED ACCORDING TO THE CONTRACTS, AND SO THIS MONEY

11:44AM 1 WAS RECEIVED, BUT WAS RECORDED AS DEFERRED REVENUE.

11:45AM 2 Q. AND THEN FURTHER BELOW FOR JANUARY 14TH THERE'S AN ENTRY

11:45AM 3 FOR \$1,312,500 ASSOCIATED WITH MENDENHALL TF.

11:45AM 4 DO YOU SEE THAT?

11:45AM 5 A. YES.

11:45AM 6 Q. AND DO YOU BELIEVE THAT TO BE ANOTHER INVESTMENT IN

11:45AM 7 THERANOS?

11:45AM 8 A. I BELIEVE SO.

11:45AM 9 Q. PLEASE LOOK AT THE NEXT TAB, 5785.

11:45AM 10 IS THIS A TRUE AND CORRECT COPY OF A COMERICA CHECKING

11:45AM 11 STATEMENT FOR THERANOS'S ACCOUNT FOR THE TIME PERIOD FEBRUARY

11:45AM 12 OF 2014?

11:45AM 13 A. YES.

11:46AM 14 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

11:46AM 15 EXHIBIT 5785.

11:46AM 16 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:46AM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:46AM 18 (GOVERNMENT'S EXHIBIT 5785 WAS RECEIVED IN EVIDENCE.)

11:46AM 19 BY MR. LEACH:

11:46AM 20 Q. IF I COULD DRAW YOUR ATTENTION TO PAGE 2.

11:46AM 21 DO YOU SEE THE ENTRY ON FEBRUARY 5TH FOR \$5 MILLION,

11:46AM 22 MS. SPIVEY?

11:46AM 23 A. YES.

11:46AM 24 Q. AND RELATED TO SOMETHING CALLED CENTRAL VALLEY.

11:46AM 25 DO YOU SEE THAT?

11:46AM 1 A. YES.

11:46AM 2 Q. AND DO YOU BELIEVE THAT TO BE AN INVESTMENT IN THERANOS?

11:46AM 3 A. YES.

11:46AM 4 Q. AND BENEATH THAT THERE'S TWO -- THERE'S AN ENTRY FOR

11:46AM 5 55,479,993 FOR PARTNER INVEST.

11:46AM 6 AND 38,336,632 FOR PFM HEALTH CARE.

11:46AM 7 DO YOU SEE THOSE?

11:46AM 8 A. YES.

11:46AM 9 Q. AND DO YOU BELIEVE THOSE TO BE INVESTMENTS IN THERANOS?

11:46AM 10 A. YES.

11:46AM 11 Q. AND DO YOU RECOGNIZE PFM AS AN INVESTOR IN THERANOS?

11:47AM 12 A. YES.

11:47AM 13 Q. AND DO YOU SEE ANOTHER ENTRY ASSOCIATED WITH PEER VENTURES

11:47AM 14 IN THE AMOUNT OF 13,249,987?

11:47AM 15 A. YES.

11:47AM 16 Q. AND DO YOU BELIEVE THAT TO BE THE SAME PEER VENTURES WE

11:47AM 17 WERE TALKING ABOUT IN OTHER EXHIBITS?

11:47AM 18 A. YES.

11:47AM 19 Q. OKAY. AND THEN THERE'S A \$2,323,373 ENTRY ON FEBRUARY 6TH

11:47AM 20 RELATED TO PFM HEALTH CARE.

11:47AM 21 DO YOU SEE THAT?

11:47AM 22 A. YES.

11:47AM 23 Q. IS THAT ANOTHER INVESTMENT IN THERANOS?

11:47AM 24 A. YES.

11:47AM 25 Q. PLEASE LOOK AT EXHIBIT 5788.

11:47AM 1 IS THIS A TRUE AND CORRECT COPY OF A CHECKING STATEMENT
11:47AM 2 FROM COMERICA FOR THERANOS FOR THE TIME PERIOD OCTOBER 2014?

11:47AM 3 A. YES.

11:47AM 4 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
11:48AM 5 EXHIBIT 5788.

11:48AM 6 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:48AM 7 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:48AM 8 (GOVERNMENT'S EXHIBIT 5788 WAS RECEIVED IN EVIDENCE.)

11:48AM 9 BY MR. LEACH:

11:48AM 10 Q. I DRAW YOUR ATTENTION TO PAGE 2, MS. SPIVEY.

11:48AM 11 DO YOU SEE DOWN TOWARDS THE END OF THE MONTH THERE IS AN
11:48AM 12 ENTRY FOR \$99,999,984 RELATED TO LAKESHORE CAPT?

11:48AM 13 A. YES.

11:48AM 14 Q. DO YOU BELIEVE THAT TO BE AN INVESTMENT IN THERANOS?

11:48AM 15 A. YES.

11:48AM 16 Q. BENEATH THAT THERE'S AN ENTRY OF NEARLY \$25 MILLION
11:48AM 17 RELATED TO ANDREAS DRACO.

11:48AM 18 DO YOU SEE THAT?

11:48AM 19 A. YES.

11:48AM 20 Q. AND DO YOU BELIEVE THAT TO BE AN INVESTMENT IN THERANOS?

11:48AM 21 A. YES.

11:48AM 22 Q. AND BENEATH THAT THERE'S A NEARLY \$6 MILLION ENTRY
11:48AM 23 ASSOCIATED WITH MOSLEY FAMILY.

11:48AM 24 DO YOU SEE THAT?

11:48AM 25 A. YES.

11:48AM 1 Q. ARE YOU FAMILIAR WITH THE NAME DAN MOSLEY?

11:49AM 2 A. NO.

11:49AM 3 Q. HOW ABOUT MOSLEY FAMILY TRUST?

11:49AM 4 A. NO.

11:49AM 5 Q. OKAY. DO YOU BELIEVE THIS TO BE AN INVESTMENT IN

11:49AM 6 THERANOS?

11:49AM 7 A. YES.

11:49AM 8 MR. COOPERSMITH: OBJECTION. 602.

11:49AM 9 THE COURT: OVERRULED. THE ANSWER WILL REMAIN.

11:49AM 10 MR. LEACH: THANK YOU, YOUR HONOR.

11:49AM 11 Q. PLEASE LOOK AT EXHIBIT 5789.

11:49AM 12 IS THIS A COMERICA CHECKING ACCOUNT STATEMENT FOR THERANOS

11:49AM 13 FOR THE TIME PERIOD NOVEMBER OF 2014?

11:49AM 14 A. YES.

11:49AM 15 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

11:49AM 16 EXHIBIT 5789.

11:49AM 17 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:49AM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:49AM 19 (GOVERNMENT'S EXHIBIT 5789 WAS RECEIVED IN EVIDENCE.)

11:49AM 20 MR. LEACH: AND IF WE CAN ZOOM IN TOWARDS THE TOP ON

11:49AM 21 PAGE 2, MS. WACHS. THANK YOU.

11:49AM 22 Q. MS. SPIVEY, THE FIRST ENTRY HERE ON NOVEMBER 3RD WAS A

11:50AM 23 WIRE FOR \$100 MILLION RELATED TO COX ENTERPRISE.

11:50AM 24 DO YOU SEE THAT?

11:50AM 25 A. YES.

11:50AM 1 Q. DO YOU BELIEVE THAT TO BE AN INVESTMENT IN THERANOS?

11:50AM 2 A. YES.

11:50AM 3 Q. AND THEN BENEATH THAT ARE SOME ENTRIES, BCBS OF ARIZONA,

11:50AM 4 HC CLAIM PAYMENTS, \$49.37, AND THERE ARE SOME OTHER AMOUNTS

11:50AM 5 ASSOCIATED WITH NORIDIAN.

11:50AM 6 DO YOU SEE THOSE?

11:50AM 7 A. YES.

11:50AM 8 Q. AND WHAT ARE THOSE?

11:50AM 9 MR. COOPERSMITH: OBJECTION. RELEVANCE, YOUR HONOR.

11:50AM 10 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

11:50AM 11 THE WITNESS: YES. THAT IS THE AMOUNT OF MONEY THAT

11:50AM 12 THEIR COMPANY RECEIVED FOR PERFORMING TESTING SERVICES.

11:51AM 13 BY MR. LEACH:

11:51AM 14 Q. LET ME PLEASE DRAW YOUR ATTENTION TO EXHIBIT 5791.

11:51AM 15 IS THIS A TRUE AND CORRECT COPY OF A COMERICA BANK

11:51AM 16 STATEMENT FOR THERANOS FOR THE TIME PERIOD DECEMBER OF 2014?

11:51AM 17 A. YES.

11:51AM 18 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

11:51AM 19 EXHIBIT 5791.

11:51AM 20 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:51AM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:51AM 22 (GOVERNMENT'S EXHIBIT 5791 WAS RECEIVED IN EVIDENCE.)

11:51AM 23 BY MR. LEACH:

11:51AM 24 Q. DRAWING YOUR ATTENTION AGAIN TO PAGE 2, MS. SPIVEY,

11:51AM 25 THERE'S SOME AMOUNTS ON DECEMBER 15TH, 99 MILLION, 49 MILLION,

11:51AM 1 2 MILLION ASSOCIATED WITH MADRONE, SODA SPRINGS AND THE BANK OF
11:51AM 2 NE.
11:51AM 3 DO YOU SEE THAT?
11:51AM 4 A. YES.
11:51AM 5 Q. AND DO YOU BELIEVE THOSE TO BE INVESTMENTS IN THERANOS?
11:51AM 6 A. YES.
11:51AM 7 Q. AND THEN -- LET ME ASK A BETTER QUESTION.
11:52AM 8 AND THEN BENEATH THE \$2.9 MILLION ENTRY, THERE'S SOME
11:52AM 9 ADDITIONAL AMOUNTS RELATED TO NORIDIAN AND BCBS.
11:52AM 10 ARE THOSE SIMILAR TO THE ONES WE SAW IN THE PRIOR
11:52AM 11 STATEMENT?
11:52AM 12 A. YES.
11:52AM 13 Q. AND IF I COULD PLEASE DRAW YOUR ATTENTION TO EXHIBIT 5790?
11:52AM 14 A. SORRY. CAN YOU REPEAT?
11:52AM 15 Q. 5790. WE'RE MOVING BACKWARDS IN THE BINDER.
11:52AM 16 DO YOU HAVE THAT?
11:52AM 17 A. YES.
11:52AM 18 Q. GREAT.
11:52AM 19 LET ME DRAW YOUR ATTENTION TO PAGE 5. IS PAGE 5 A TRUE
11:53AM 20 AND CORRECT COPY OF A STATEMENT FOR THERANOS'S ACCOUNT AT
11:53AM 21 WELLS FARGO FOR THE TIME PERIOD OF FEBRUARY OF 2015?
11:53AM 22 A. YES.
11:53AM 23 Q. OKAY. AND I ASKED YOU A NUMBER OF QUESTIONS ABOUT
11:53AM 24 COMERICA.
11:53AM 25 DID YOU ALSO USE DOCUMENTS LIKE THIS AND THE INFORMATION

11:53AM 1 IN THERE IN PREPARING THERANOS'S BOOKS AND RECORDS?

11:53AM 2 A. YES.

11:53AM 3 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS PAGE 5

11:53AM 4 OF EXHIBIT 5790.

11:54AM 5 (PAUSE IN PROCEEDINGS.)

11:54AM 6 THE COURT: MR. COOPERSMITH, ANY OBJECTION?

11:54AM 7 MR. COOPERSMITH: ONE MOMENT, YOUR HONOR. SORRY.

11:54AM 8 (PAUSE IN PROCEEDINGS.)

11:54AM 9 MR. COOPERSMITH: YOUR HONOR, I WOULD ASK THAT IF

11:54AM 10 WE'RE JUST ADMITTING ONE PAGE, THAT WE ADMIT THE WHOLE EXHIBIT.

11:54AM 11 MR. LEACH: THAT'S FINE, TOO.

11:54AM 12 THE COURT: ALL RIGHT. THE ENTIRETY OF 5790 IS

11:54AM 13 ADMITTED, AND IT MAY BE PUBLISHED.

11:54AM 14 (GOVERNMENT'S EXHIBIT 5790 WAS RECEIVED IN EVIDENCE.)

11:54AM 15 BY MR. LEACH:

11:54AM 16 Q. MS. SPIVEY, I DRAW YOUR ATTENTION TO THE CREDITS PORTION

11:54AM 17 OF THIS STATEMENT. THERE'S AN ENTRY FOR \$125 MILLION RELATING

11:54AM 18 TO RUPERT MURDOCH.

11:54AM 19 DO YOU SEE THAT?

11:54AM 20 A. YES.

11:54AM 21 Q. DO YOU BELIEVE THIS TO BE AN INVESTMENT IN THERANOS?

11:54AM 22 A. YES.

11:54AM 23 Q. OKAY. WE CAN TAKE THAT DOWN, MS. WACHS.

11:55AM 24 I'D LIKE TO SHIFT TOPICS A LITTLE BIT, MS. SPIVEY, AND ASK

11:55AM 25 YOU TO PLEASE LOOK AT EXHIBIT 5794.

11:55AM 1 DO YOU HAVE THAT IN FRONT OF YOU?

11:55AM 2 A. YES.

11:55AM 3 Q. OKAY. IS THIS A TRUE AND CORRECT COPY OF A SPREADSHEET
11:55AM 4 THAT YOU PREPARED IN THE COURSE OF YOUR WORK AT THERANOS?

11:55AM 5 A. I BELIEVE SO.

11:55AM 6 Q. AND FROM TIME TO TIME WOULD YOU PREPARE A SHAREHOLDER LIST
11:55AM 7 ON BEHALF OF THE COMPANY FOR MS. HOLMES TO REVIEW?

11:55AM 8 A. YES.

11:55AM 9 Q. OKAY. AND HOW DID YOU GO ABOUT PREPARING THOSE? WHAT
11:56AM 10 WOULD YOU DO WHEN MS. HOLMES WOULD ASK YOU THAT?

11:56AM 11 A. COULD YOU REPEAT THAT?

11:56AM 12 Q. SURE. WHEN MS. HOLMES REQUESTED A SHAREHOLDER LIST, WHAT
11:56AM 13 WOULD YOU DO? HOW WOULD YOU GO ABOUT PREPARING THAT?

11:56AM 14 A. SO I HAVE AN EXCEL FILE WHEN I RECEIVE INVESTMENT FUNDS
11:56AM 15 FROM THE BANK ACCOUNTS, AND I WOULD ENTER THAT INFORMATION ON A
11:56AM 16 SPREADSHEET SO THAT I HAVE A RUNNING LIST OF WHAT THE -- WHO
11:56AM 17 THE INVESTORS ARE, HOW MUCH MONEY THEY PUT IN, AND HOW MANY
11:56AM 18 SHARES THEY PURCHASE, AND THE SERIES OR THE CLASSIFICATION OF
11:56AM 19 THE SHARES.

11:56AM 20 AND WHEN SHE ASKED ME FOR INFORMATION LIKE THAT, AND I
11:56AM 21 PULL FROM THAT DATA.

11:56AM 22 Q. AND I THINK YOU BEGAN YOUR TESTIMONY BY SAYING PART OF
11:56AM 23 YOUR RESPONSIBILITY AS THE CONTROLLER WAS TO MANAGE THE
11:56AM 24 ACCOUNTING RELATED TO EQUITY?

11:56AM 25 A. YES.

11:56AM 1 Q. AND TO KEEP TRACK OF THERANOS'S SHAREHOLDERS AND THE
11:56AM 2 AMOUNT OF MONEY THAT THEY HAD PUT IN?

11:56AM 3 A. YES.

11:56AM 4 Q. AND TO KEEP TRACK OF THEIR VARIOUS PERCENTAGES OF THE
11:57AM 5 COMPANY; IS THAT FAIR?

11:57AM 6 A. YES.

11:57AM 7 Q. AND DID YOU PREPARE EXHIBIT 5794 IN THE ORDINARY COURSE OF
11:57AM 8 BUSINESS?

11:57AM 9 A. YES.

11:57AM 10 Q. AND DID YOU KEEP THIS IN THE ORDINARY COURSE OF BUSINESS?

11:57AM 11 A. YES.

11:57AM 12 Q. AND WAS THIS PREPARED BY YOU BASED ON INFORMATION FROM THE
11:57AM 13 BOOKS AND RECORDS REGULARLY MAINTAINED BY THERANOS?

11:57AM 14 A. YES.

11:57AM 15 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
11:57AM 16 EXHIBIT 5794.

11:57AM 17 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:57AM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:57AM 19 (GOVERNMENT'S EXHIBIT 5794 WAS RECEIVED IN EVIDENCE.)

11:57AM 20 MR. LEACH: MS. WACHS, IF WE COULD START BY
11:57AM 21 DISPLAYING, IF YOU COULD GO --

11:57AM 22 Q. WE HAVE ON THE SCREEN, MS. SPIVEY, THE NATIVE FILE, AND I
11:57AM 23 JUST WANT TO LOOK AT SOME OF THE PROPERTIES RELATING TO THIS
11:57AM 24 FILE.

11:57AM 25 AND, MS. WACHS, IF YOU COULD CLICK ON FILE AND INFO.

11:58AM 1 DO YOU SEE YOUR NAME LISTED AS THE AUTHOR ON THE RIGHT OF
11:58AM 2 THIS, MS. SPIVEY?
11:58AM 3 A. YES.
11:58AM 4 Q. OKAY. AND DO YOU SEE THAT THERE'S A CREATED DATE AND A
11:58AM 5 LASTED PRINTED DATE OF MARCH 2014?
11:58AM 6 A. YES.
11:58AM 7 Q. OKAY. AND IF WE COULD GO BACK, PLEASE, SO THAT -- DO YOU
11:58AM 8 SEE IN THE LEFT CORNER THERANOS INC. SHAREHOLDER LIST THERANOS
11:58AM 9 CONFIDENTIAL?
11:58AM 10 A. YES.
11:58AM 11 Q. AND DO YOU BELIEVE THAT THIS ACCURATELY REPRESENTS THE
11:58AM 12 SHAREHOLDERS OF THERANOS AT OR AROUND THIS TIME PERIOD?
11:58AM 13 A. YES.
11:58AM 14 Q. OKAY. THE FIRST ROW SAYS, ELIZABETH ANN HOLMES, TYPE OF
11:58AM 15 INVESTOR, TOTAL SHARES, 251,828,810.
11:58AM 16 DO YOU SEE THAT?
11:58AM 17 A. YES.
11:58AM 18 Q. AND TO THE RIGHT THERE'S A PERCENT OF OWNERSHIP COLUMN.
11:58AM 19 DO YOU SEE THAT?
11:58AM 20 A. YES.
11:58AM 21 Q. AND WHAT DOES THAT COLUMN REPRESENT?
11:59AM 22 A. THE PERCENTAGE OF OWNERSHIP SHE HAS AT THERANOS.
11:59AM 23 Q. OKAY. SO FOR MS. HOLMES THAT WOULD BE 51.21 PERCENT?
11:59AM 24 A. YES.
11:59AM 25 Q. AT LEAST IN THIS TIME PERIOD?

11:59AM 1 A. YES.

11:59AM 2 Q. OKAY. AND DOES THAT COMPORT GENERALLY WITH YOUR MEMORY?

11:59AM 3 A. YES.

11:59AM 4 Q. AND BENEATH THAT IT SAYS RAMESH "SUNNY" BALWANI.

11:59AM 5 DO YOU SEE THAT?

11:59AM 6 A. YES.

11:59AM 7 Q. AND TO THE RIGHT IN THE TOTAL SHARES IT SAYS 29,716,815.

11:59AM 8 DO YOU SEE THAT?

11:59AM 9 A. YES.

11:59AM 10 Q. AND WHAT IS THE PERCENTAGE OF OWNERSHIP OF MR. BALWANI?

11:59AM 11 A. 6.04 PERCENT.

11:59AM 12 Q. YOU SAID YOUR INTERACTIONS WITH MR. BALWANI INCREASED OVER

11:59AM 13 TIME AS HE WORKED WITH THE COMPANY?

11:59AM 14 A. YES.

11:59AM 15 Q. AND SO YOUR INTERACTIONS WITH HIM WERE MORE SIGNIFICANT IN

11:59AM 16 THE 2013, 2014, 2015 TIME PERIOD THAN THEY WERE AT THE

11:59AM 17 BEGINNING?

11:59AM 18 A. YES.

11:59AM 19 Q. OKAY. AND FROM TIME TO TIME WOULD YOU HAVE CONVERSATIONS

12:00PM 20 WITH MR. BALWANI ABOUT REVENUE RECOGNITION?

12:00PM 21 A. YES.

12:00PM 22 Q. DESCRIBE THOSE FOR US, PLEASE.

12:00PM 23 A. SO I BELIEVE THAT PROBABLY WAS IN 2013, 2014 TIMEFRAME

12:00PM 24 RELATED TO KPMG'S REVIEW OF THE BOOKS AND RECORDS, AND THERE

12:00PM 25 WERE QUESTIONS ABOUT WHY THERE WOULD BE NO REVENUE NUMBER IN

12:00PM 1 THOSE PERIODS AND WHY THERE'S SUCH A LARGE AMOUNT OF DEFERRED
12:00PM 2 REVENUE.

12:00PM 3 SO HE SUGGESTS TO ME THAT THERE WOULD BE SOME REVENUE FROM
12:00PM 4 CELGENE SHOULD BE RECOGNIZED AND SOME AMOUNT OF -- FROM
12:00PM 5 WALGREENS SHOULD ALSO BE RECOGNIZED.

12:00PM 6 AND SO I EXPLAINED TO HIM THAT ACCORDING TO ACCOUNTING
12:01PM 7 RULES, AND THOSE SHOULD NOT BE RECOGNIZED BECAUSE WE DID NOT
12:01PM 8 PERFORM ACCORDING TO THE CONTRACTS.

12:01PM 9 BUT HE HAS A DIFFERENT OPINION.

12:01PM 10 I TOLD HIM I WOULD FOLLOW UP WITH KPMG AND SEE WHAT KPMG
12:01PM 11 AGREED WITH.

12:01PM 12 Q. AND AFTER YOUR FOLLOWUP WITH KPMG, DID THERANOS EVER
12:01PM 13 RECOGNIZE THE REVENUE?

12:01PM 14 A. NO.

12:01PM 15 Q. DID MR. BALWANI EVER GIVE YOU DOCUMENTS OR SUPPORT FROM
12:01PM 16 EITHER CELGENE OR WALGREENS SO THAT YOU COULD RECOGNIZE
12:01PM 17 REVENUE?

12:01PM 18 A. NO.

12:01PM 19 Q. AND IN THESE CONVERSATIONS WITH MR. BALWANI, WAS IT EASY
12:01PM 20 TO COMMUNICATE THIS INFORMATION TO HIM?

12:01PM 21 A. UM, YES.

12:01PM 22 Q. AND DID HE EVER EXPRESS SOME LEVEL OF FRUSTRATION WITH
12:01PM 23 YOU?

12:01PM 24 A. UM, YES. HE ASKED ME TO RECOGNIZE THESE AND I TOLD HIM --
12:02PM 25 LIKE WHEN I ASKED HIM, FOR EXAMPLE, FOR CELGENE, I SAID, I

12:02PM 1 DON'T HAVE ANY DOCUMENTS OF ANY SHIPMENTS MADE TO CELGENE, AND
12:02PM 2 HE WOULD JUST SAY WE SHIPPED EVERYTHING ALREADY, AND JUST --
12:02PM 3 AND I SAID, IF I DON'T HAVE ANY DOCUMENTS, THEN I CANNOT
12:02PM 4 RECOGNIZE.

12:02PM 5 Q. OKAY. AND AFTER THOSE CONVERSATIONS WOULD YOU TALK TO
12:02PM 6 KPMG?

12:02PM 7 A. YES.

12:02PM 8 Q. AND DID YOU EVER RECOGNIZE THE REVENUE?

12:02PM 9 A. NO.

12:02PM 10 Q. I'D LIKE TO ASK SOME ADDITIONAL QUESTIONS ABOUT ARANCA AND
12:02PM 11 THE VALUATIONS YOU WERE TALKING ABOUT EARLIER, AND IN
12:02PM 12 CONNECTION WITH THAT, I WOULD LIKE TO DRAW YOUR ATTENTION TO
12:02PM 13 WHAT HAS BEEN MARKED AS EXHIBIT 5085, WHICH SHOULD BE IN
12:02PM 14 VOLUME 1.

12:02PM 15 DO YOU HAVE 5085 IN FRONT OF YOU, MS. SPIVEY?

12:03PM 16 A. YES.

12:03PM 17 Q. OKAY. IS THIS AN EMAIL THAT YOU SENT TO ELIZABETH HOLMES
12:03PM 18 ON OR ABOUT MAY 25TH, 2013?

12:03PM 19 A. YES.

12:03PM 20 Q. AND DO YOU SEE THE SUBJECT 409A?

12:03PM 21 A. YES.

12:03PM 22 Q. AND FROM TIME TO TIME WOULD YOU COMMUNICATE WITH
12:03PM 23 MS. HOLMES OVER EMAIL IN THE COURSE OF GETTING DIRECTION ON
12:03PM 24 409A VALUATIONS?

12:03PM 25 A. YES.

12:03PM 1 Q. AND DID YOU DO YOUR BEST TO BE ACCURATE IN THOSE EMAILS
12:03PM 2 WITH MS. HOLMES?

12:03PM 3 A. YES.

12:03PM 4 Q. AND WAS THAT SO YOU COULD GO BACK AND MAKE SURE YOU WERE
12:03PM 5 TRACKING WHAT YOU WERE GETTING FROM MS. HOLMES SO THAT YOU
12:04PM 6 COULD ACCURATELY CONVEY THAT TO MR. BALWANI OR TO ARANCA?

12:04PM 7 A. YES.

12:04PM 8 Q. AND DID YOU KEEP EMAILS LIKE THIS IN THE ORDINARY COURSE
12:04PM 9 OF BUSINESS?

12:04PM 10 A. YES.

12:04PM 11 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
12:04PM 12 EXHIBIT 5085.

12:04PM 13 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:04PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:04PM 15 (GOVERNMENT'S EXHIBIT 5085 WAS RECEIVED IN EVIDENCE.)

12:04PM 16 BY MR. LEACH:

12:04PM 17 Q. MS. SPIVEY, THE FIRST EMAIL IN THIS CHAIN IS FROM
12:04PM 18 MS. HOLMES AND THE SUBJECT IS 409A.

12:04PM 19 DO YOU SEE THAT?

12:04PM 20 A. YES.

12:04PM 21 Q. IS THAT A REFERENCE TO THE INTERNAL REVENUE CODE PROVISION
12:04PM 22 THAT WE WERE TALKING ABOUT EARLIER?

12:04PM 23 A. YES.

12:04PM 24 Q. "CAN YOU FORWARD ME THE LATEST YOU HAVE ON GETTING THIS
12:04PM 25 DONE -- I AM GOING TO GET WHATEVER WE NEED DONE DONE THIS

12:04PM 1 WEEKEND."

12:04PM 2 DO YOU SEE THAT?

12:04PM 3 A. YES.

12:04PM 4 Q. AND THEN YOU WROTE BACK, "HERE ARE THE THREE LATEST MODEL

12:04PM 5 WE HAVE."

12:04PM 6 AND THERE ARE THREE DIFFERENT DATES.

12:04PM 7 DO YOU SEE THAT?

12:04PM 8 A. YES.

12:04PM 9 Q. AND THE FIRST LINE SAYS, "BASED ON THIS MODEL, ARANCA CAME

12:05PM 10 BACK WITH A VALUE OF \$0.44. THE IMPACT WAS THAT YOUR OPTION

12:05PM 11 PLUS ALL THE OTHER OPTIONS THAT WERE GRANTED IN JUNE WOULD BE

12:05PM 12 GRANTED BELOW VALUE."

12:05PM 13 WHAT WERE YOU GETTING AT THERE?

12:05PM 14 A. CAN YOU REPHRASE THAT QUESTION, PLEASE?

12:05PM 15 Q. WHAT DOES THAT MEAN? WHAT ARE YOU REPORTING TO MS. HOLMES

12:05PM 16 THERE?

12:05PM 17 A. SO THERANOS GRANTED OPTIONS TO ELIZABETH HOLMES AND THE

12:05PM 18 LIST OF EMPLOYEES IN THAT TIMEFRAME AT THE VALUE THAT WAS LOWER

12:05PM 19 THAN THE \$0.44.

12:05PM 20 Q. OKAY. AND WAS THAT AN ISSUE?

12:05PM 21 A. THAT WAS AN ISSUE WITH THE TAX -- HOW THE TAX WOULD BE

12:05PM 22 CALCULATED FOR THE OPTIONEE.

12:05PM 23 Q. AND DOES THIS RELATE TO THE ISSUE THAT KPMG HAD BACK IN

12:06PM 24 2010?

12:06PM 25 A. YES.

12:06PM 1 Q. OKAY. 2, IN PARAGRAPH 2 IT SAYS 07/01/10.

12:06PM 2 IS THAT THE DATE OF ONE OF ARANCA'S VALUATIONS?

12:06PM 3 A. YES.

12:06PM 4 Q. AND YOU WROTE, "BASED ON THIS REVISED MODEL, THE VALUE

12:06PM 5 WOULD BE \$0.73 (REDUCED \$0.30 FROM 1.03). THE IMPACT IS THAT

12:06PM 6 SUNNY'S OPTION WOULD BE GRANTED AT BELOW MARKET VALUE IN

12:06PM 7 AUGUST 2010."

12:06PM 8 WHAT DOES THAT MEAN?

12:06PM 9 A. IT WAS SIMILAR TO THE MAY 31ST BECAUSE SUNNY'S OPTION WAS

12:06PM 10 GRANTED IN AUGUST AND IT WAS ALSO BELOW THE FAIR MARKET VALUE

12:06PM 11 AT THAT TIME.

12:06PM 12 Q. OKAY. AND DID THAT CREATE ANY TYPE OF ISSUE?

12:06PM 13 A. YES.

12:06PM 14 Q. HOW SO?

12:06PM 15 A. IT'S ALSO RELATED TO THE TAX CALCULATION.

12:07PM 16 Q. AND DOES THIS ALSO RELATE BACK TO THE ISSUE THAT KPMG HAD

12:07PM 17 IN TERMS OF THE AUDITED FINANCIAL STATEMENTS?

12:07PM 18 A. YES.

12:07PM 19 Q. AND THEN IT -- IN PARAGRAPH 3 IT SAYS, "07/01/11."

12:07PM 20 IS THAT A REFERENCE TO A VALUATION DATE?

12:07PM 21 A. FROM THIS EMAIL, YES.

12:07PM 22 Q. "HAVE NOT STARTED THE REVIEW PROCESS YET BECAUSE OF THE

12:07PM 23 ABOVE TWO PENDING VALUATIONS. PLEASE ALSO SEE THE SUMMARY

12:07PM 24 COMPARISON OF 7/10 AND 7/11 MODELS."

12:07PM 25 DO YOU SEE THAT?

12:07PM 1 A. YES.

12:07PM 2 Q. AND DOES THAT MEAN ARANCA WAS STILL DOING WORK IN THAT

12:07PM 3 REGARD?

12:07PM 4 A. YES.

12:07PM 5 Q. AND SO THE DATE OF THIS EMAIL IS MAY 25TH, 2013.

12:07PM 6 DO YOU SEE THAT?

12:07PM 7 A. YES.

12:07PM 8 Q. AND I'D LIKE TO DRAW YOUR ATTENTION FORWARD IN TIME TO

12:07PM 9 EXHIBIT 3283.

12:08PM 10 DO YOU HAVE 3283 IN FRONT OF YOU?

12:08PM 11 A. YES.

12:08PM 12 Q. IS THIS A TRUE AND CORRECT COPY OF AN EMAIL THAT YOU SENT

12:08PM 13 TO MR. BALWANI DATED JULY 31ST, 2013, WITH A COPY TO

12:08PM 14 MS. HOLMES?

12:08PM 15 A. YES.

12:08PM 16 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:08PM 17 EXHIBIT 3283.

12:08PM 18 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:08PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:08PM 20 (GOVERNMENT'S EXHIBIT 3283 WAS RECEIVED IN EVIDENCE.)

12:08PM 21 BY MR. LEACH:

12:08PM 22 Q. LET ME DRAW YOUR ATTENTION TO THE TOP PORTION, MS. SPIVEY,

12:08PM 23 THE EMAIL ON JULY 31ST, 2013, UP AT THE TOP.

12:08PM 24 AND DO YOU SEE THE SUBJECT OF THIS IS PER OUR

12:08PM 25 CONVERSATION?

12:09PM 1 A. YES.

12:09PM 2 Q. OKAY. DO YOU SEE THERE'S AN ATTACHMENT, THERANOS'S

12:09PM 3 PROJECTIONS 2013-2014 V2 (FORMATTED).

12:09PM 4 DO YOU SEE THAT FILE ATTACHED?

12:09PM 5 A. YES.

12:09PM 6 Q. OKAY. "I ADDED THE RECEIPTS TO THE FOLLOWING CATEGORIES.

12:09PM 7 PLEASE LET ME KNOW IF THEY ARE NOT CORRECT:

12:09PM 8 "SERVICES NBL BY WALGREENS PLUS 25M.

12:09PM 9 "CHANGE IN DEFERRED REVENUE PLUS 4M."

12:09PM 10 DO YOU SEE THAT LANGUAGE?

12:09PM 11 A. YES.

12:09PM 12 Q. IS THIS A CONVERSATION THAT YOU'RE HAVING WITH MS. HOLMES

12:09PM 13 AND MR. BALWANI?

12:09PM 14 A. I BELIEVE SO.

12:09PM 15 Q. DO YOU BELIEVE YOU'RE TAKING SOME DIRECTION FROM THEM?

12:09PM 16 A. YES.

12:09PM 17 Q. OKAY. LET'S DRAW YOUR ATTENTION TO THE ATTACHMENT.

12:09PM 18 DO YOU SEE AT THE TOP IT SAYS THERANOS PROJECTED STATEMENT

12:10PM 19 OF INCOME?

12:10PM 20 A. YES.

12:10PM 21 Q. AND SO THESE ARE NOT HISTORICAL, THESE ARE PROJECTIONS FOR

12:10PM 22 THE FUTURE?

12:10PM 23 A. YES.

12:10PM 24 Q. AND ONE RELATES TO 2013 AND ANOTHER ONE RELATES TO THE

12:10PM 25 TIME PERIOD 2014?

12:10PM 1 A. YES.

12:10PM 2 Q. OKAY. AND UNDER PROJECTED REVENUE THERE ARE ENTRIES FOR

12:10PM 3 LAB SERVICES AT RETAIL PHARMACIES/EMPLOYER SITES,

12:10PM 4 PHARMACEUTICAL SERVICES, HOSPITAL SERVICES REVENUE, DOD.

12:10PM 5 DO YOU SEE THAT?

12:10PM 6 A. YES.

12:10PM 7 Q. AND THE SUM TOTAL OF THAT PROJECTED REVENUE IS \$51 MILLION

12:10PM 8 FOR 2013.

12:10PM 9 DID I READ THAT CORRECTLY?

12:10PM 10 A. YES.

12:10PM 11 Q. AND FOR THE PERIOD 2014 THE PROJECTION IS 26 MILLION.

12:10PM 12 DO YOU SEE THAT?

12:10PM 13 OR 260 MILLION, EXCUSE ME, NOT 26 MILLION.

12:10PM 14 IS THAT CORRECT?

12:10PM 15 A. YES.

12:10PM 16 Q. OKAY. AND ARE THESE NUMBERS THAT YOU PERSONALLY CAME UP

12:11PM 17 WITH?

12:11PM 18 A. NO.

12:11PM 19 Q. WHERE DID THEY COME FROM?

12:11PM 20 A. I DON'T KNOW. EITHER MS. HOLMES OR MR. BALWANI.

12:11PM 21 Q. OKAY. AND THERE'S A REFERENCE TO DOD.

12:11PM 22 IS THAT AN ACRONYM FOR SOMETHING?

12:11PM 23 A. DEPARTMENT OF DEFENSE.

12:11PM 24 Q. OKAY. AND THE DATE OF THE EMAIL HERE IS JULY 31ST, 2013.

12:11PM 25 IF YOU DON'T MIND LOOKING AT PAGE 1 OF THE EXHIBIT. I

12:11PM 1 JUST WANT TO ORIENT US AS TO TIME.

12:11PM 2 A. YES.

12:11PM 3 Q. OKAY. LET ME NEXT DRAW YOUR ATTENTION TO EXHIBIT 13711,

12:11PM 4 WHICH SHOULD BE IN VOLUME 2.

12:12PM 5 A. WHAT IS THAT AGAIN?

12:12PM 6 Q. IT'S 13711. IT SHOULD BE AT THE BACK OF VOLUME 2.

12:12PM 7 IS THIS AN EMAIL FROM YOU TO MS. HOLMES WITH A COPY TO

12:12PM 8 MR. BALWANI?

12:12PM 9 A. YES.

12:12PM 10 Q. AND THE SUBJECT IS 409A PROJECTION.

12:12PM 11 DO YOU SEE THAT?

12:12PM 12 A. YES.

12:12PM 13 Q. AND IS THIS A SIMILAR -- IS THE SUBJECT MATTER OF THIS

12:12PM 14 SIMILAR TO THE EXHIBIT WE SAW A FEW MOMENTS AGO BETWEEN YOU AND

12:13PM 15 MS. HOLMES?

12:13PM 16 A. YES.

12:13PM 17 Q. OKAY.

12:13PM 18 YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 13711.

12:13PM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:13PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:13PM 21 (DEFENDANT'S EXHIBIT 13711 WAS RECEIVED IN EVIDENCE.)

12:13PM 22 BY MR. LEACH:

12:13PM 23 Q. LET'S START WITH THE BOTTOM EMAIL.

12:13PM 24 MS. SPIVEY, DO YOU SEE WHERE YOU WROTE ON AUGUST 2ND,

12:13PM 25 2013, "ATTACHED PLEASE FIND THE PROJECTION AS OF 7/1/2013."

12:13PM 1 DO YOU SEE THAT?

12:13PM 2 A. YES.

12:13PM 3 Q. AND YOU WROTE, "THE MAIN CHANGES ARE BOTH RELATED TO

12:13PM 4 EQUITY TRANSACTIONS."

12:13PM 5 DO YOU SEE THAT?

12:13PM 6 A. YES.

12:13PM 7 Q. AND YOU'RE SENDING THIS BOTH TO MS. HOLMES AND

12:13PM 8 MR. BALWANI; CORRECT?

12:13PM 9 A. YES.

12:13PM 10 Q. IS THIS AN EXAMPLE OF YOU SEEKING FEEDBACK FROM MS. HOLMES

12:13PM 11 AND MR. BALWANI ABOUT WHAT TO REPORT TO ARANCA?

12:13PM 12 A. YES.

12:13PM 13 Q. OKAY. LET'S ZOOM OUT IF WE COULD, MS. WACHS.

12:13PM 14 AND ABOUT A MONTH LATER YOU WROTE, "WAITING FOR YOUR

12:14PM 15 FEEDBACK."

12:14PM 16 DO YOU SEE THAT?

12:14PM 17 A. YES.

12:14PM 18 Q. AND MS. HOLMES RESPONDS, "WHAT DROVE THE 50M IN 2013

12:14PM 19 REVENUE PROJECTION."

12:14PM 20 DO YOU SEE THAT?

12:14PM 21 A. YES.

12:14PM 22 Q. AND YOUR ANSWER IS, "SUNNY'S ESTIMATE."

12:14PM 23 DO YOU SEE THAT?

12:14PM 24 A. YES.

12:14PM 25 Q. IS THAT A REFERENCE TO MR. BALWANI?

12:14PM 1 A. YES.

12:14PM 2 Q. AND ARE YOU REPORTING TO MS. HOLMES THAT THE REVENUE

12:14PM 3 PROJECTION FOR 2013 FOR ARANCA WAS COMING FROM MR. BALWANI?

12:14PM 4 A. YES.

12:14PM 5 Q. OKAY. THANK YOU. YOU CAN TAKE THAT DOWN, MS. WACHS.

12:14PM 6 I'M SORRY TO JUMP AROUND BINDERS, BUT IF YOU COULD GO BACK

12:14PM 7 TO VOLUME 1, EXHIBIT 5141.

12:15PM 8 DO YOU HAVE 5141 IN FRONT OF YOU, MS. SPIVEY?

12:15PM 9 A. YES.

12:15PM 10 Q. OKAY. IS THIS AN EMAIL FROM YOU TO SOMEONE NAMED

12:15PM 11 VALESKA HINTZ WITH A COPY TO MS. HOLMES?

12:15PM 12 A. YES.

12:15PM 13 Q. AND DO YOU SEE THE EXHIBIT 409A VALUATION REPORT?

12:15PM 14 A. YES.

12:15PM 15 Q. OKAY. AND THERE'S AN ATTACHMENT TO THIS.

12:15PM 16 DO YOU SEE PAGE 2 OF THE ATTACHMENT?

12:15PM 17 A. YES.

12:15PM 18 Q. IS THIS A REPORT FROM ARANCA FOR A DIFFERENT TIME PERIOD

12:15PM 19 SIMILAR TO THE EXHIBIT THAT WE LOOKED AT EARLIER THIS MORNING

12:15PM 20 IN CONNECTION WITH YOUR TESTIMONY?

12:15PM 21 A. YES.

12:15PM 22 Q. AND IS THIS A DOCUMENT THAT YOU USED IN THE ORDINARY

12:15PM 23 COURSE OF YOUR BUSINESS TO VALUE OPTIONS THAT THE COMPANY MIGHT

12:16PM 24 PROVIDE TO EMPLOYEES?

12:16PM 25 A. YES.

12:16PM 1 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
12:16PM 2 EXHIBIT 5141.

12:16PM 3 MR. COOPERSMITH: YOUR HONOR, RULE 802 OBJECTION ON
12:16PM 4 THE ATTACHMENT.

12:16PM 5 THE COURT: OVERRULED. IT CAN BE ADMITTED. AND IT
12:16PM 6 MAY BE PUBLISHED.

12:16PM 7 (GOVERNMENT'S EXHIBIT 5141 WAS RECEIVED IN EVIDENCE.)

12:16PM 8 MR. LEACH: THANK YOU, YOUR HONOR.

12:16PM 9 Q. MS. SPIVEY, LET'S FIRST LOOK AT THE SUBSTANCE OF THE TWO
12:16PM 10 EMAILS.

12:16PM 11 DO YOU SEE WHERE VALESKA HINTZ IS ASKING YOU, WITH A COPY
12:16PM 12 TO MS. HOLMES, "HI DANISE, COULD YOU PLEASE SEND ME THE FINAL
12:16PM 13 409A VALUATION REPORT FOR SEPTEMBER 30TH, 2013."

12:16PM 14 DO YOU SEE THAT?

12:16PM 15 A. YES.

12:16PM 16 Q. AND YOU RESPOND BY ATTACHING THE REPORT?

12:16PM 17 A. YES.

12:16PM 18 Q. OKAY. LET'S LOOK AT PAGE 2.

12:17PM 19 DO YOU SEE WHERE IT SAYS THERANOS INC. FMV OF COMMON STOCK
12:17PM 20 AS OF SEPTEMBER 30TH, 2013?

12:17PM 21 A. YES.

12:17PM 22 Q. AND FMV IS FAIR MARKET VALUE?

12:17PM 23 A. YES.

12:17PM 24 Q. AND THIS IS ARANCA'S ASSESSMENT OF THE FAIR MARKET VALUE
12:17PM 25 OF THERANOS'S COMMON STOCK AS OF A DIFFERENT DATE THAN THE ONE

12:17PM 1 WE LOOKED AT PREVIOUSLY?

12:17PM 2 A. YES.

12:17PM 3 Q. OKAY. AND IN THE COURSE OF ARANCA'S PREPARATION OF THIS,
12:17PM 4 DID YOU PROVIDE THEM WITH HISTORICAL FINANCIAL INFORMATION?

12:17PM 5 A. YES.

12:17PM 6 Q. AND DID YOU ALSO PROVIDE THEM WITH PROJECTIONS OF
12:17PM 7 THERANOS'S FUTURE REVENUE BASED ON INFORMATION THAT YOU GOT
12:17PM 8 FROM MS. HOLMES AND MR. BALWANI?

12:17PM 9 A. YES.

12:17PM 10 Q. OKAY. LET'S LOOK AND DRAW YOUR ATTENTION TO, LET'S TRY
12:18PM 11 PAGE 51, PLEASE. IF WE CAN ZOOM IN ON THE TABLE, THE SUMMARY
12:18PM 12 INFORMATION STATEMENT IN THOUSANDTHS.

12:18PM 13 MS. SPIVEY, DOES THIS APPEAR TO BE A PROJECTION OF
12:18PM 14 THERANOS'S REVENUE FOR THE TIME PERIODS 2013 THROUGH 2017?

12:18PM 15 A. YES.

12:18PM 16 Q. AND DO YOU BELIEVE THIS TO BE INFORMATION THAT YOU
12:18PM 17 PROVIDED TO ARANCA FROM MS. HOLMES AND MR. BALWANI?

12:18PM 18 A. YES.

12:18PM 19 Q. AND DO YOU SEE FOR 2013, THE REVENUES ARE PROJECTED TO BE
12:18PM 20 \$50 MILLION.

12:18PM 21 DO YOU SEE THAT?

12:18PM 22 A. YES.

12:18PM 23 Q. AND THAT'S THE NUMBER THAT WE SAW FROM THE EMAIL BACK IN
12:18PM 24 AUGUST; CORRECT?

12:18PM 25 A. I BELIEVE SO.

12:19PM 1 Q. OKAY. AND THAT'S ALSO CLOSE TO THE AMOUNT THAT WE SAW IN
12:19PM 2 THE PROJECTED STATEMENT OF INCOME FROM THE JULY TIME PERIOD; IS
12:19PM 3 THAT CORRECT?

12:19PM 4 A. I'M NOT SURE.

12:19PM 5 Q. OKAY. DO YOU REMEMBER LOOKING AT A PROJECTED STATEMENT OF
12:19PM 6 INCOME WITH A \$50 MILLION NUMBER?

12:19PM 7 A. YES.

12:19PM 8 Q. AND AS WE GO FORWARD IN TIME, THE PROJECTIONS ARE
12:19PM 9 89 MILLION FOR 2014, 112 MILLION FOR 2015, 131 MILLION FOR
12:19PM 10 2016, AND 143 MILLION FOR 2017.

12:19PM 11 DO YOU SEE THAT?

12:19PM 12 A. YES.

12:19PM 13 Q. OKAY. AND WHERE DO THOSE NUMBERS COME FROM?

12:19PM 14 A. EITHER FROM MR. BALWANI OR MS. HOLMES.

12:19PM 15 Q. OKAY. LET ME DRAW YOUR ATTENTION, PLEASE, TO
12:20PM 16 EXHIBIT 3533.

12:20PM 17 IS THIS AN EMAIL FROM YOU TO MS. HOLMES DATED
12:20PM 18 FEBRUARY 16TH, 2014?

12:20PM 19 A. YES.

12:20PM 20 Q. AND DO YOU SEE THE SUBJECT 409A PREP?

12:20PM 21 A. YES.

12:20PM 22 Q. IS THIS ANOTHER EMAIL AND THE TOPIC RELATING TO 409A
12:20PM 23 VALUATIONS THAT WE'VE BEEN DISCUSSING?

12:20PM 24 A. YES.

12:20PM 25 Q. AND DID YOU SEND THIS TO MS. HOLMES IN THE ORDINARY COURSE

12:20PM 1 OF BUSINESS?

12:20PM 2 A. YES.

12:20PM 3 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:20PM 4 EXHIBIT 3533.

12:20PM 5 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:20PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:20PM 7 (GOVERNMENT'S EXHIBIT 3533 WAS RECEIVED IN EVIDENCE.)

12:20PM 8 BY MR. LEACH:

12:21PM 9 Q. MS. SPIVEY, LET ME DRAW YOUR ATTENTION TO THE TOP PART OF

12:21PM 10 YOUR EMAIL. YOU WROTE, "HI ELIZABETH,

12:21PM 11 "WE SHOULD ALSO DISCUSS UPDATING THE 409A. HERE ARE A FEW

12:21PM 12 QUESTIONS TO START.

12:21PM 13 "1. THIS WAS THE REVENUE PROJECTION WE USED FOR THE LAST

12:21PM 14 ONE. DO WE STILL KEEP THIS (JUST PUSH OUT BY ONE YEAR)?"

12:21PM 15 DO YOU SEE THAT?

12:21PM 16 A. YES.

12:21PM 17 Q. AND WHAT WERE YOU GETTING AT THERE?

12:21PM 18 A. I WAS TRYING TO GET THE REVENUE PROJECTION FOR THE 409A.

12:21PM 19 Q. OKAY. AND YOU SAY THAT "THIS WAS THE REVENUE PROJECTION

12:21PM 20 THAT WE USED FOR THE LAST ONE."

12:21PM 21 IF WE CAN ZOOM OUT, MS. WACHS.

12:21PM 22 ARE THE NUMBERS YOU LISTED FOR THE LAST ONE LISTED BELOW

12:21PM 23 AT THE BOTTOM OF THE EMAIL?

12:21PM 24 A. YES.

12:21PM 25 Q. OKAY. AND FOR FY 2013, IT READS HERE 50 MILLION.

12:21PM 1 DO YOU SEE THAT?

12:21PM 2 A. YES.

12:21PM 3 Q. AND WAS THAT THE NUMBER THAT WE SAW IN THE ARANCA REPORT

12:21PM 4 THAT WE JUST LOOKED AT IN THE PRIOR EXHIBIT?

12:22PM 5 A. I THINK SO.

12:22PM 6 Q. OKAY. AND DO THE NUMBERS FOR 2014 THROUGH 2017 APPEAR

12:22PM 7 SIMILAR TO THE ONES THAT WE SAW IN THE ARANCA REPORT THAT WE

12:22PM 8 JUST LOOKED AT?

12:22PM 9 A. YES.

12:22PM 10 Q. OKAY. LET'S MOVE FORWARD IN TIME, MS. SPIVEY.

12:22PM 11 IF I COULD DRAW YOUR ATTENTION TO 3527.

12:22PM 12 DO YOU HAVE THAT?

12:22PM 13 A. YES.

12:22PM 14 Q. OKAY. IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND

12:22PM 15 MS. HOLMES RELATING TO 409A ISSUES?

12:22PM 16 A. YES.

12:22PM 17 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS 3527.

12:23PM 18 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:23PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:23PM 20 (GOVERNMENT'S EXHIBIT 3527 WAS RECEIVED IN EVIDENCE.)

12:23PM 21 BY MR. LEACH:

12:23PM 22 Q. LET'S STARTED, MS. SPIVEY, ON PAGE 2. THERE APPEARS TO BE

12:23PM 23 AN EMAIL FROM MS. HOLMES SAYING, "HOW FAST CAN ARANCA DO A 409A

12:23PM 24 AS OF NOW."

12:23PM 25 DO YOU SEE THAT?

12:23PM 1 A. YES.

12:23PM 2 Q. AND YOU WROTE BACK, "I WILL CHECK... WHAT IS YOUR TIMING?"

12:23PM 3 DID I READ THAT CORRECTLY?

12:23PM 4 A. YES.

12:23PM 5 Q. AND WHAT DID MS. HOLMES SEEM TO BE ASKING OF YOU THERE?

12:23PM 6 A. SHE WANTS ANOTHER ARANCA REPORT AS OF A DIFFERENT DATE.

12:23PM 7 Q. OKAY. SIMILAR TO THE ONES THAT WE HAVE BEEN LOOKING AT?

12:23PM 8 A. CORRECT.

12:23PM 9 Q. AND LET'S GO TO PAGE 1.

12:23PM 10 DO YOU SEE AT THE BOTTOM WHERE SHE WROTE "ASAP (THIS

12:24PM 11 YEAR) "?

12:24PM 12 A. YES.

12:24PM 13 Q. OKAY. AND THEN THERE'S SOME BACK AND FORTH. AND IN THE

12:24PM 14 MIDDLE OF THE PAGE AT DECEMBER 22ND AT 3:05, IT LOOKS LIKE YOU

12:24PM 15 WROTE, "I SENT OVER THE PROJECTION TO ARANCA LAST NIGHT. THEY

12:24PM 16 KNOW WE HAVE A DEADLINE BEFORE THE END OF THE YEAR AND WILL

12:24PM 17 WORK WITH THAT.

12:24PM 18 "I USED THE SAME ASSUMPTIONS FOR REVENUE AS IN OCTOBER,

12:24PM 19 ROUGHLY 100M, 200M, 300M, AND 500M IN 2015 THRU 2018."

12:24PM 20 DO YOU SEE THAT?

12:24PM 21 A. YES.

12:24PM 22 Q. AND DOES THAT ACCURATELY DESCRIBE WHAT YOU PASSED ON TO

12:24PM 23 ARANCA?

12:24PM 24 A. IN OCTOBER, YES.

12:24PM 25 Q. OKAY. AND THAT WOULD HAVE BEEN BASED ON INFORMATION FROM

12:24PM 1 MS. HOLMES AND MR. BALWANI?

12:24PM 2 A. YES.

12:24PM 3 Q. AND MS. HOLMES WRITES BACK TO YOU "100M FOR 15 RIGHT."

12:25PM 4 DO YOU SEE THAT?

12:25PM 5 A. YES.

12:25PM 6 Q. AND WHAT DID THAT MEAN?

12:25PM 7 A. SO SHE'S CONFIRMING THAT IT'S 100 MILLION FOR 2015.

12:25PM 8 Q. AND CONFIRMING THAT THE REVENUE PROJECTION THAT YOU

12:25PM 9 PROVIDED TO ARANCA FOR 2015 WAS \$100 MILLION?

12:25PM 10 A. YES.

12:25PM 11 Q. OKAY. AND YOU WROTE BACK YES?

12:25PM 12 A. YES.

12:25PM 13 Q. SO YOU CONFIRMED THAT TO HER?

12:25PM 14 A. CORRECT.

12:25PM 15 Q. LET'S LOOK AT 5190, PLEASE.

12:25PM 16 DO YOU HAVE THAT IN FRONT OF YOU, 5190?

12:26PM 17 A. YES.

12:26PM 18 Q. IS THIS AN EMAIL FROM YOU TO MS. HOLMES AND MR. BALWANI

12:26PM 19 DATED DECEMBER 31ST, 2014?

12:26PM 20 A. YES.

12:26PM 21 Q. AND IS THE SUBJECT 409A REPORT?

12:26PM 22 A. YES.

12:26PM 23 Q. AND DO YOU ATTACH ANOTHER ARANCA REPORT SIMILAR TO THE

12:26PM 24 ONES THAT WE'VE LOOKED AT PREVIOUSLY?

12:26PM 25 A. YES.

12:26PM 1 Q. OKAY. AND DID YOU -- DID YOU USE THE ATTACHMENT IN THE
12:26PM 2 ORDINARY COURSE OF BUSINESS TO VALUE THE STOCK OPTIONS?

12:26PM 3 A. YES.

12:26PM 4 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
12:26PM 5 EXHIBIT 5190.

12:26PM 6 MR. COOPERSMITH: SAME 802 OBJECTION, YOUR HONOR.

12:26PM 7 THE COURT: THANK YOU. THE OBJECTION IS OVERRULED.
12:26PM 8 803(6). IT WILL BE ADMITTED, AND IT MAY BE PUBLISHED.

12:26PM 9 (GOVERNMENT'S EXHIBIT 5190 WAS RECEIVED IN EVIDENCE.)

12:26PM 10 BY MR. LEACH:

12:26PM 11 Q. MS. SPIVEY, IN THE EMAIL YOU WROTE, "THE CURRENT VALUE IS
12:27PM 12 \$1.44 PER SHARE."

12:27PM 13 AND THEN THERE'S A SUMMARY OF DIFFERENT METHODS. ARE
12:27PM 14 THOSE METHODS THAT ARANCA USED TO REACH THE VALUATION?

12:27PM 15 A. YES.

12:27PM 16 Q. AND WHY ARE YOU REPORTING THE CURRENT VALUE OF 1.44 PER
12:27PM 17 SHARE TO MS. HOLMES AND MR. BALWANI?

12:27PM 18 A. I DON'T UNDERSTAND THE QUESTION.

12:27PM 19 Q. WHY WERE YOU HIGHLIGHTING THAT INFORMATION FROM MS. HOLMES
12:27PM 20 AND MR. BALWANI, IF YOU REMEMBER?

12:27PM 21 A. I MEAN, THAT WAS THE VALUE FOR THE 409 REPORTS, AND I
12:27PM 22 DON'T REMEMBER WHAT THE PURPOSE. MAYBE IT WAS STOCK OPTION
12:27PM 23 GRANTING OR SOMETHING. I DON'T REMEMBER.

12:27PM 24 Q. OKAY. YOU DON'T REMEMBER WHY YOU HIGHLIGHTED THAT
12:28PM 25 INFORMATION FROM THEM?

12:28PM 1 A. RIGHT.

12:28PM 2 Q. OKAY. LET'S LOOK AT A PORTION OF THE REPORT.

12:28PM 3 I WANT TO DRAW YOUR ATTENTION TO PAGE 31. AND DOES THIS

12:28PM 4 PORTION OF THE REPORT SUMMARIZE THE REVENUE ESTIMATES THAT

12:28PM 5 THERANOS WAS PROVIDING TO ARANCA?

12:28PM 6 A. YES.

12:28PM 7 Q. OKAY. IF WE LOOK OVER TO THE FAR RIGHT COLUMN, DO YOU SEE

12:28PM 8 WHERE IT SAYS DEC-15?

12:28PM 9 A. YES.

12:28PM 10 Q. IS THAT THE YEAR END IN 2015?

12:28PM 11 A. YES.

12:28PM 12 Q. AND THE REVENUE PROJECTION THAT THERANOS PROVIDED TO

12:28PM 13 ARANCA WAS 113,452,000?

12:28PM 14 A. YES.

12:28PM 15 Q. AND THE NUMBER THAT WE SAW IN THE EMAIL THAT YOU WERE

12:29PM 16 EXCHANGING WITH MS. HOLMES WAS ROUGHLY IN THE HUNDRED MILLION

12:29PM 17 DOLLAR RANGE?

12:29PM 18 A. CORRECT.

12:29PM 19 Q. OKAY. AND IF WE LOOK AT THE NEXT PAGE, PAGE 32, DO YOU

12:29PM 20 SEE THAT THERE ARE ALSO ESTIMATES FOR 2016, 2017, AND 2018?

12:29PM 21 A. YES.

12:29PM 22 Q. AND ARE THOSE NUMBERS IN THE RANGE OF WHAT YOU WERE

12:29PM 23 TALKING ABOUT WITH MS. HOLMES IN THE PRIOR EMAIL?

12:29PM 24 A. YES.

12:29PM 25 Q. AND I THINK WE TALKED ABOUT EARLIER -- IF WE CAN GO BACK

12:29PM 1 TO PAGE 31. THERE'S A FORECAST OF 2014 REVENUE OF 150,000.

12:29PM 2 AM I READING THAT CORRECTLY?

12:29PM 3 A. YES.

12:29PM 4 Q. OKAY. AND IS THAT ROUGHLY IN LINE WITH WHAT THERANOS
12:29PM 5 ACTUALLY ACHIEVED IN 2014?

12:29PM 6 A. YES.

12:29PM 7 Q. LET'S NEXT GO TO 5209, PLEASE. AND I'M SORRY, BUT THAT'S
12:30PM 8 IN VOLUME 2.

12:30PM 9 DO YOU HAVE 5209 IN FRONT OF YOU, MS. SPIVEY?

12:30PM 10 A. YES.

12:30PM 11 Q. AND IS THIS AN EMAIL FROM YOU TO MS. HOLMES AND
12:30PM 12 MR. BALWANI RELATING TO THE 409 ISSUE?

12:30PM 13 A. YES.

12:30PM 14 Q. AND IS THIS DATED APRIL 13TH, 2015?

12:30PM 15 A. YES.

12:30PM 16 Q. AND DO YOU ATTACH FOR MS. HOLMES AND MR. BALWANI THE
12:30PM 17 LATEST 409A REPORT?

12:31PM 18 A. YES.

12:31PM 19 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
12:31PM 20 EXHIBIT 5209.

12:31PM 21 MR. COOPERSMITH: SAME. 802, YOUR HONOR.

12:31PM 22 THE COURT: DID YOU WANT TO -- IS THIS THE SAME
12:31PM 23 REPORT? I'M SORRY.

12:31PM 24 MR. LEACH: IT'S A DIFFERENT REPORT, BUT SIMILAR
12:31PM 25 CONCEPTS.

12:31PM 1 THE COURT: DO YOU WANT TO JUST LAY A FOUNDATION?

12:31PM 2 MR. LEACH: SURE.

12:31PM 3 Q. COULD I DRAW YOUR ATTENTION -- DO YOU SEE IN THE EMAIL,
12:31PM 4 MS. SPIVEY, THERE ARE TWO ATTACHMENTS?

12:31PM 5 A. YES.

12:31PM 6 Q. AND ONE IS A PDF AND ONE IS AN EXCEL SPREADSHEET?

12:31PM 7 A. YES.

12:31PM 8 Q. OKAY. AND IF I COULD DRAW YOUR ATTENTION TO PAGE 2, DO
12:31PM 9 YOU SEE THERE'S A REPORT PREPARED BY ARANCA?

12:31PM 10 A. YES.

12:31PM 11 Q. AND IS THIS ANOTHER SITUATION OF A STOCK OPTION VALUATION
12:31PM 12 REPORT THAT YOU WOULD USE IN THE ORDINARY COURSE OF BUSINESS?

12:31PM 13 A. YES.

12:31PM 14 Q. AND DID YOU KEEP THIS IN THE ORDINARY COURSE OF THERANOS'S
12:31PM 15 BUSINESS?

12:31PM 16 A. YES.

12:31PM 17 Q. AND WAS IT PREPARED BASED ON INFORMATION BY PEOPLE WITH
12:32PM 18 KNOWLEDGE AT OR AROUND THE TIME?

12:32PM 19 A. YES.

12:32PM 20 Q. AND DID YOU RELY ON THE ACCURACY OF THIS TO PREPARE
12:32PM 21 THERANOS'S BOOKS AND RECORDS RELATING TO THE STOCK OPTION
12:32PM 22 VALUATION?

12:32PM 23 A. YES.

12:32PM 24 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
12:32PM 25 EXHIBIT 5209.

12:32PM 1 THE COURT: THE OBJECTION IS OVERRULED. IT'S

12:32PM 2 ADMITTED. 803(6). IT MAY BE PUBLISHED.

12:32PM 3 (GOVERNMENT'S EXHIBIT 5209 WAS RECEIVED IN EVIDENCE.)

12:32PM 4 MR. LEACH: IF WE CAN PLEASE GO, MS. WACHS, TO

12:32PM 5 PAGE 29.

12:32PM 6 Q. DO YOU SEE THE HEADING BUSINESS PLAN REVIEW, MS. SPIVEY?

12:32PM 7 A. YES.

12:32PM 8 Q. AND DO YOU SEE WHERE IT SAYS, "THERANOS'S MANAGEMENT HAS

12:32PM 9 DEVELOPED FINANCIAL PROJECTIONS FOR THE BUSINESS BASED ON THEIR

12:32PM 10 REVIEW OF THE MARKET OPPORTUNITY, OPERATIONAL PLAN OF

12:32PM 11 COMMERCIALIZING THE SERVICE RECOVERS OFFERING, AND THE TIEUP

12:33PM 12 WITH WALGREENS."

12:33PM 13 DO YOU SEE THAT LANGUAGE?

12:33PM 14 A. YES.

12:33PM 15 Q. AND IF WE COULD GO TO PAGE 3. I'M SORRY. PAGE 30.

12:33PM 16 DO YOU SEE THE HEADING 4.3 INCOME STATEMENT?

12:33PM 17 A. YES.

12:33PM 18 Q. AND DOES THIS SUMMARIZE REVENUE PROJECTIONS THAT THERANOS

12:33PM 19 PROVIDED TO ARANCA FOR THE VALUATION?

12:33PM 20 A. YES.

12:33PM 21 Q. OKAY. AND DO YOU SEE THE COLUMN FOR DECEMBER 2015?

12:33PM 22 A. YES.

12:33PM 23 Q. AND DO YOU SEE THE AMOUNT OF 113,438,000?

12:33PM 24 A. YES.

12:33PM 25 Q. OKAY. IS THAT NUMBER SIMILAR TO WHAT WE SAW IN THE PRIOR

12:33PM 1 REPORT IN THE LAST EXHIBIT?

12:33PM 2 A. SIMILAR, YES.

12:33PM 3 Q. YEAH. AND THE NUMBERS FOR 2016, 2017, 2018, ARE THOSE

12:34PM 4 ALSO SIMILAR TO THE PROJECTIONS WE SAW IN THE PRIOR EXHIBIT?

12:34PM 5 A. YES.

12:34PM 6 Q. OKAY. YOU CAN PUT THAT BINDER ASIDE.

12:34PM 7 LET ME ASK ABOUT EXHIBIT 2623, WHICH SHOULD BE IN

12:34PM 8 VOLUME 1.

12:34PM 9 DOES THIS APPEAR TO BE AN EMAIL FROM YOU TO

12:34PM 10 ELIZABETH HOLMES AND SUNNY BALWANI DATED JULY 16TH, 2015?

12:34PM 11 A. YES.

12:34PM 12 Q. OKAY. SO -- AND IS THE SUBJECT 409A?

12:35PM 13 A. YES.

12:35PM 14 Q. AND IS THIS ANOTHER EXAMPLE OF BACK AND FORTH BETWEEN YOU,

12:35PM 15 MS. HOLMES, AND MR. BALWANI ABOUT 409A VALUATIONS?

12:35PM 16 A. YES.

12:35PM 17 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:35PM 18 EXHIBIT 2623.

12:35PM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:35PM 20 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:35PM 21 (GOVERNMENT'S EXHIBIT 2623 WAS RECEIVED IN EVIDENCE.)

12:35PM 22 MR. LEACH: IF WE COULD GO TO PAGE 2, MS. WACHS.

12:35PM 23 Q. DOWN AT THE BOTTOM, MS. SPIVEY, THERE'S AN EMAIL FROM YOU

12:35PM 24 WITH THE SUBJECT SUNIL DHAWAN.

12:35PM 25 DO YOU SEE THAT?

12:35PM 1

A. YES.

12:35PM 2

Q. AND YOU WROTE DOWN AT THE BOTTOM, "HI SUNNY," AND IT

12:35PM 3

CONTINUES ON THE NEXT PAGE, "AS WE BRIEFLY TOUCHED BASE LAST

12:35PM 4

NIGHT, ALL OPTION GRANTS WOULD BE PENDING ON THE 409A VALUATION

12:35PM 5

(DUE TO MARK'S TRANSACTION). IF YOU CAN HELP REVIEW THE

12:36PM 6

ASSUMPTIONS USED FOR THE PROJECTIONS, WE WILL MOVE THIS ALONG

12:36PM 7

QUICKLY.

12:36PM 8

THANKS, DANISE."

12:36PM 9

DO YOU SEE THAT?

12:36PM 10

A. YES.

12:36PM 11

Q. IS THAT AN EXAMPLE OF YOU SEEKING INPUT FROM MR. BALWANI

12:36PM 12

ABOUT WHAT TO DO FOR PROJECTIONS -- ON WHAT PROJECTIONS TO

12:36PM 13

PROVIDE TO ARANCA?

12:36PM 14

A. YES.

12:36PM 15

Q. LET'S GO BACK TO PAGE 2, PLEASE. AND IF WE CAN ZOOM IN ON

12:36PM 16

THE EMAIL IN MIDDLE OF THE PAGE AT 8:19.

12:36PM 17

DO YOU SEE WHERE YOU WROTE, "PLEASE SEE ATTACHED FOR THE

12:36PM 18

FULL PROJECTION MODEL. THE QUICKEST TURN-AROUND TIME IS TWO

12:36PM 19

WEEKS, DEPENDING ON HOW MUCH CHANGES TO THE ASSUMPTIONS WE ARE

12:36PM 20

MAKING. THE ASSUMPTIONS WE HAD BEEN USING SINCE SEPTEMBER 2014

12:36PM 21

WERE AS FOLLOWS."

12:36PM 22

DO YOU SEE THAT?

12:36PM 23

A. YES.

12:36PM 24

Q. AND THEN THERE'S A TABLE BENEATH THAT.

12:36PM 25

WHAT IS REPRESENTED IN THE TABLE?

12:36PM 1 A. THAT'S THE REVENUE NUMBER AND THE OTHER ASSUMPTIONS THAT I
12:37PM 2 USED TO CREATE THE PROJECTIONS THAT WE SENT TO ARANCA.
12:37PM 3 Q. OKAY. AND BASED ON THIS EMAIL, IS IT YOUR BELIEF THAT
12:37PM 4 THESE ARE THE PROJECTIONS THAT YOU HAD BEEN PROVIDING TO ARANCA
12:37PM 5 SINCE SEPTEMBER OF 2014?
12:37PM 6 A. YES.
12:37PM 7 Q. AND YOU WERE DOING YOUR BEST TO BE AS ACCURATE AS POSSIBLE
12:37PM 8 WITH ARANCA?
12:37PM 9 A. YES.
12:37PM 10 Q. LET'S GO BACK TO THE FIRST PAGE.
12:37PM 11 LOOK AT THE TOP EMAIL. YOU WROTE HERE, "HI ELIZABETH,
12:37PM 12 "REVISED REVENUE NUMBERS PER DISCUSSION AND UPDATED MODEL.
12:37PM 13 I WILL SEND THIS TO ARANCA.
12:37PM 14 "WE WILL STILL NEED TO KNOW HOW MANY OPTIONS WILL BE
12:38PM 15 GRANTED AT THE NEW VALUE (WHETHER AND HOW MANY TO INCLUDE FOR
12:38PM 16 YOU AND SB) .
12:38PM 17 "THANKS, DANISE."
12:38PM 18 DO YOU SEE THAT?
12:38PM 19 A. YES.
12:38PM 20 Q. AND IT LOOKS LIKE THE REVENUE NUMBER FOR 2015 IS NOW
12:38PM 21 \$53 MILLION.
12:38PM 22 DO YOU SEE THAT?
12:38PM 23 A. YES.
12:38PM 24 Q. AND SO THE NUMBERS HAVE GONE DOWN?
12:38PM 25 A. YES.

12:38PM 1 Q. AND SITTING HERE TODAY, DO YOU HAVE A MEMORY OF WHY THAT
12:38PM 2 IS THE CASE?
12:38PM 3 A. I DO NOT KNOW.
12:38PM 4 Q. OKAY. AND IS THIS AN EXAMPLE OF YOU SEEKING INPUT FROM
12:38PM 5 MR. BALWANI AND MS. HOLMES ABOUT WHAT INFORMATION TO PROVIDE TO
12:38PM 6 ARANCA?
12:38PM 7 A. YES.
12:38PM 8 Q. LET ME DRAW YOUR ATTENTION NOW TO EXHIBIT 4859.
12:39PM 9 A. OKAY.
12:39PM 10 Q. DID YOU PREPARE THIS?
12:39PM 11 A. NO.
12:39PM 12 Q. DID YOU RECOGNIZE THE HANDWRITING ON THIS?
12:39PM 13 A. NO.
12:39PM 14 Q. AND PRIOR TO 2015, HAD YOU EVER SEEN THIS?
12:39PM 15 A. NO.
12:39PM 16 Q. OKAY. DURING PRIOR PROCEEDINGS AND MEETINGS WITH THE
12:39PM 17 GOVERNMENT, DID YOU HAVE AN OPPORTUNITY TO SEE THIS?
12:39PM 18 A. YES.
12:39PM 19 Q. OKAY. BUT IT'S NOT SOMETHING THAT YOU HAD A HAND IN
12:39PM 20 PREPARING?
12:39PM 21 A. CORRECT.
12:39PM 22 MR. LEACH: YOUR HONOR, I OFFER EXHIBIT 4859 UNDER
12:39PM 23 RULE 104. I ANTICIPATE ANOTHER WITNESS WILL LAY THE FOUNDATION
12:39PM 24 FOR THIS.
12:39PM 25 MR. COOPERSMITH: YOUR HONOR, I HAVE A HEARSAY

12:39PM 1 OBJECTION TO THE EXHIBIT. I UNDERSTAND THAT THEY MAY CALL
12:39PM 2 ANOTHER WITNESS, SO WE WOULD LIKE THE INSTRUCTION ON
12:39PM 3 CONDITIONAL EXHIBITS.

12:39PM 4 THE COURT: ALL RIGHT. THANK YOU.

12:39PM 5 OTHERWISE YOU HAVE NO OBJECTION?

12:40PM 6 MR. COOPERSMITH: SUBJECT TO IT BEING --

12:40PM 7 THE COURT: SURE.

12:40PM 8 MR. COOPERSMITH: RIGHT.

12:40PM 9 THE COURT: LADIES AND GENTLEMEN, THIS WILL BE
12:40PM 10 ADMITTED CONDITIONALLY.

12:40PM 11 PLEASE RECALL SOME OTHER EXHIBITS WERE ADMITTED IN THIS
12:40PM 12 FASHION. THAT IS, THIS IS BEING ADMITTED AND IT WILL BE
12:40PM 13 PUBLISHED AND DISCUSSED SUBJECT TO A FURTHER FOUNDATION BEING
12:40PM 14 LAID BY ANOTHER WITNESS LATER IN THIS CASE.

12:40PM 15 SHOULD THAT FOUNDATION NOT OCCUR OR SHOULD THERE BE AN
12:40PM 16 ISSUE WITH THE ADMISSION OF THIS, I WILL THEN STRIKE THE
12:40PM 17 EXHIBIT, AS WELL AS ALL OF THE TESTIMONY THAT OCCURRED ABOUT
12:40PM 18 THE EXHIBIT.

12:40PM 19 WITH THAT PROVISIO THEN, IT WILL BE CONDITIONALLY ADMITTED,
12:40PM 20 AND IT MAY BE PUBLISHED.

12:40PM 21 (GOVERNMENT'S EXHIBIT 4859 WAS CONDITIONALLY RECEIVED IN
12:40PM 22 EVIDENCE.)

12:40PM 23 MR. LEACH: AND IF WE CAN ZOOM IN ON THE TOP HALF OF
12:40PM 24 THIS, MS. WACHS. THAT'S GREAT.

12:41PM 25 Q. DO YOU SEE THE HEADING PROJECTED STATEMENT OF INCOME,

12:41PM 1 MS. SPIVEY?

12:41PM 2 A. YES.

12:41PM 3 Q. AND DO YOU SEE TO THE RIGHT THERE ARE TWO COLUMNS FOR THE

12:41PM 4 PERIOD ENDING 2014 AND THE PERIOD ENDING 2015?

12:41PM 5 A. YES.

12:41PM 6 Q. AND DO YOU SEE TO THE LEFT THERE ARE SOME ENTRIES FOR

12:41PM 7 REVENUE U.S. COMMERCIAL ONLY?

12:41PM 8 A. YES.

12:41PM 9 Q. AND BENEATH THAT THERE ARE LINES, LAB SERVICES FROM U.S.

12:41PM 10 RETAIL PHARMACIES; LAB SERVICES REVENUE FROM PHYSICIAN OFFICES;

12:41PM 11 LAB SERVICES REVENUE FROM HOSPITALS; ONSITE SERVICES REVENUE

12:41PM 12 FROM HOSPITALS; PHARMACEUTICAL SERVICES; AND DOD.

12:41PM 13 DO YOU SEE THOSE ENTRIES?

12:41PM 14 A. YES.

12:41PM 15 Q. AND THEN THERE ARE SOME NUMBERS TO THE RIGHT?

12:41PM 16 A. YES.

12:41PM 17 Q. AND YOU DIDN'T HAVE A HAND IN PUTTING THESE TOGETHER?

12:41PM 18 A. NO.

12:41PM 19 Q. OKAY. DO YOU KNOW WHETHER THIS WAS EVER PROVIDED TO AN

12:41PM 20 INVESTOR?

12:41PM 21 A. I DO NOT KNOW.

12:41PM 22 Q. OKAY. DO YOU KNOW WHERE THE NUMBERS IN HERE COME FROM?

12:42PM 23 A. I DO NOT KNOW.

12:42PM 24 Q. OKAY. THERE'S AN ENTRY OF \$40 MILLION IN 2014 FOR

12:42PM 25 PHARMACEUTICAL SERVICES.

12:42PM 1 DO YOU SEE THAT?

12:42PM 2 A. YES.

12:42PM 3 Q. DID THERANOS HAVE ANY REVENUE FROM PHARMACEUTICAL SERVICES

12:42PM 4 IN 2014?

12:42PM 5 A. NO.

12:42PM 6 Q. TO THE RIGHT THERE'S A NUMBER FOR 2015 AND IT'S CROSSED

12:42PM 7 OUT.

12:42PM 8 DO YOU SEE THAT?

12:42PM 9 A. YES.

12:42PM 10 Q. AND DID THERANOS HAVE ANY PHARMACEUTICALS REVENUE IN 2015?

12:42PM 11 A. NO.

12:42PM 12 Q. ABOVE THAT THERE IS AN ENTRY OF \$47 MILLION FOR LAB

12:42PM 13 SERVICES REVENUE FROM HOSPITALS IN 2014.

12:42PM 14 DO YOU SEE THAT?

12:42PM 15 A. YES.

12:42PM 16 Q. AND DID THERANOS EVER HAVE ANY REVENUE FROM HOSPITALS?

12:42PM 17 A. NO.

12:42PM 18 Q. ABOVE THAT THERE IS AN ENTRY FOR \$11 MILLION.

12:42PM 19 DO YOU SEE THAT?

12:42PM 20 A. YES.

12:42PM 21 Q. AND THIS IS ASSOCIATED WITH LAB SERVICES REVENUE FROM

12:42PM 22 PHYSICIAN OFFICES?

12:42PM 23 A. YES.

12:42PM 24 Q. AND DID THERANOS EVER HAVE REVENUE FROM PHYSICIAN OFFICES?

12:43PM 25 A. NO.

12:43PM 1 Q. DO YOU SEE WHERE THE TOTAL REVENUE FOR 2014 IS

12:43PM 2 \$140 MILLION?

12:43PM 3 A. YES.

12:43PM 4 Q. OKAY. AND DO YOU SEE TO THE RIGHT WHERE IT IS CIRCLED

12:43PM 5 \$990 MILLION?

12:43PM 6 DO YOU SEE THAT?

12:43PM 7 A. 990 MILLION, YES.

12:43PM 8 Q. OKAY. AND YOU DON'T KNOW -- YOU HAVE NO IDEA WHERE THAT

12:43PM 9 COMES FROM?

12:43PM 10 A. NO.

12:43PM 11 Q. OKAY. MS. WACHS, IF WE COULD PLEASE COMPARE THIS TO

12:43PM 12 EXHIBIT 2623, PAGE 2.

12:43PM 13 MY QUESTION, MS. SPIVEY, IN 2623, THE PROJECTED REVENUE

12:44PM 14 WAS \$113 MILLION.

12:44PM 15 DO YOU SEE THAT?

12:44PM 16 A. YES.

12:44PM 17 Q. AND IN THIS DOCUMENT IT'S \$990 MILLION.

12:44PM 18 DO YOU SEE THAT?

12:44PM 19 A. YES.

12:44PM 20 Q. AND DO YOU HAVE ANY EXPLANATION FOR THE DIFFERENCE IN

12:44PM 21 THOSE TWO?

12:44PM 22 A. NO.

12:44PM 23 Q. DID MS. HOLMES OR MR. BALWANI EVER TELL YOU THAT THEY WERE

12:44PM 24 PROVIDING PROJECTIONS DIFFERENT FROM WHAT WAS GOING TO ARANCA

12:44PM 25 TO SOME OTHER AUDIENCE?

12:44PM 1 A. NO.

12:44PM 2 Q. DID THERANOS EVER ACHIEVE ANYTHING CLOSE TO \$990 MILLION

12:44PM 3 IN REVENUE?

12:44PM 4 A. NO.

12:44PM 5 Q. I'M SORRY?

12:44PM 6 A. NO.

12:44PM 7 Q. OKAY. I WANT TO SWITCH TOPICS, MS. SPIVEY, TO A FINAL FEW

12:44PM 8 LAST TOPICS, AND DRAW YOUR ATTENTION IN VOLUME 2 TO

12:44PM 9 EXHIBIT 5454.

12:45PM 10 IS THIS AN EMAIL FROM YOU TO MS. HOLMES AND MR. BALWANI

12:45PM 11 DATED JULY 25TH, 2015?

12:45PM 12 A. YES.

12:45PM 13 Q. AND ARE YOU SEEKING APPROVAL FROM MS. HOLMES AND

12:45PM 14 MR. BALWANI FOR CERTAIN EXPENSES OF THE COMPANY?

12:45PM 15 A. YES.

12:45PM 16 Q. AND FROM TIME TO TIME -- WHO HAD TO APPROVE EXPENSES

12:45PM 17 WITHIN THERANOS?

12:45PM 18 A. THAT DEPENDS ON THE AMOUNT OF THE EXPENSES, BUT ALL

12:45PM 19 PAYMENT WILL GO THROUGH SUNNY BALWANI.

12:45PM 20 Q. SO HE APPROVED EVERY PAYMENT?

12:45PM 21 A. YES.

12:45PM 22 Q. OKAY. AND WHEN YOU WERE SEEKING MR. BALWANI'S APPROVAL

12:46PM 23 FOR PAYMENTS, DID YOU DO YOUR BEST TO BE ACCURATE?

12:46PM 24 A. YES.

12:46PM 25 Q. AND DID YOU OCCASIONALLY SEEK APPROVAL FROM HIM BY MEANS

12:46PM 1 OF EMAIL IN THE ORDINARY COURSE OF BUSINESS?

12:46PM 2 A. YES.

12:46PM 3 Q. AND DID YOU KEEP THOSE EMAILS IN ORDER TO MEMORIALIZE WHAT

12:46PM 4 YOU WERE SEEKING FROM MR. BALWANI AND WHAT HE APPROVED?

12:46PM 5 A. YES.

12:46PM 6 Q. OKAY. THERE'S AN ATTACHMENT TO THIS DOCUMENT ON PAGE 4.

12:46PM 7 DO YOU SEE THAT?

12:46PM 8 A. YES.

12:46PM 9 Q. AND WERE YOU PROVIDING THIS TO MR. BALWANI SO THAT HE

12:46PM 10 COULD KNOW THE SUBSTANCE OF WHAT YOU WERE SEEKING APPROVAL FOR?

12:46PM 11 A. YES.

12:46PM 12 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:46PM 13 EXHIBIT 5454.

12:46PM 14 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:46PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:46PM 16 (GOVERNMENT'S EXHIBIT 5454 WAS RECEIVED IN EVIDENCE.)

12:46PM 17 BY MR. LEACH:

12:46PM 18 Q. LET ME DRAW YOUR ATTENTION, MS. SPIVEY, TO THE BOTTOM

12:47PM 19 PORTION OF THE EMAIL, THE ONE FROM SOMEONE NAMED

12:47PM 20 CARISA BIANCHI.

12:47PM 21 DO YOU SEE THAT?

12:47PM 22 A. YES.

12:47PM 23 Q. AND WHO IS SHE?

12:47PM 24 A. SHE WAS THE HEAD OF MARKETING AT THERANOS.

12:47PM 25 Q. THE HEAD OF MARKETING?

12:47PM 1 A. YEAH.

12:47PM 2 Q. OKAY. AND THE SUBJECT IS HORIZON MEDIA.

12:47PM 3 WHAT IS HORIZON MEDIA?

12:47PM 4 A. IT'S A COMPANY THAT HANDLES ALL OF THE MARKETING CAMPAIGN

12:47PM 5 FOR THERANOS.

12:47PM 6 Q. AND WHEN YOU SAY "THE MARKETING CAMPAIGN," WHAT DOES THAT

12:47PM 7 MEAN?

12:47PM 8 A. THE T.V. COMMERCIAL, RADIO, SOMETHING LIKE THAT.

12:47PM 9 Q. MS. BIANCHI WRITES IN THE EMAIL, "HI SUNNY.

12:47PM 10 "HERE IS THE DETAILED LIST OF WHAT IS INCLUDED IN THE

12:47PM 11 PHOENIX MEDIA PLAN FOR THIRD AND FOURTH QUARTER.

12:47PM 12 "ALL INVOICES REFLECT DATES THROUGH END OF YEAR."

12:48PM 13 DO YOU SEE THAT LANGUAGE?

12:48PM 14 A. YES.

12:48PM 15 Q. AND THEN IN ITEM NUMBER 2, IT SAYS, "WIRE FUNDS DUE 7/31,

12:48PM 16 \$1,126,661."

12:48PM 17 DO YOU SEE THAT?

12:48PM 18 A. YES.

12:48PM 19 Q. AND THEN IT SAYS "FOR 3Q AND 4Q T.V."

12:48PM 20 DO YOU SEE THAT?

12:48PM 21 A. YES.

12:48PM 22 Q. AND IS THAT CONSISTENT WITH THE TYPE OF MARKETING THAT

12:48PM 23 THERANOS WOULD PAY HORIZON MEDIA FOR?

12:48PM 24 A. YES.

12:48PM 25 Q. AND SHE THEN WRITES, "I WILL HAVE THE 3Q AND 4Q BUYS READY

12:48PM 1 FOR YOUR AND ELIZABETH'S REVIEW NEXT TUESDAY."

12:48PM 2 AND THEN IT CONTINUES ON THE NEXT PAGE.

12:48PM 3 DO YOU SEE WHERE IT SAYS, "THERE IS ALSO AN EXPENDITURE

12:48PM 4 FOR 3Q AND 4Q RADIO"?

12:48PM 5 A. YES.

12:48PM 6 Q. AND THEN BENEATH THAT IT SAYS, SEPTEMBER DJ AND T.V. HOST

12:48PM 7 ON-AIR SEGMENTS, ATTACHING PROPOSED DJ COPY POINTS.

12:49PM 8 DO YOU SEE THAT?

12:49PM 9 A. YES.

12:49PM 10 Q. AND THEN IF WE GO BACK TO PAGE 1 UP AT THE TOP, DO YOU SEE

12:49PM 11 THE ATTACHMENT FOR DJ COPY POINTS.DOCX?

12:49PM 12 DO YOU SEE THAT ATTACHMENT?

12:49PM 13 A. YES.

12:49PM 14 Q. AND DO YOU BELIEVE THAT TO BE A REFERENCE TO ATTACHING

12:49PM 15 PROPOSED DJ COPY POINTS?

12:49PM 16 A. YES.

12:49PM 17 Q. OKAY. AND YOU WROTE TO MR. BALWANI AND MS. HOLMES,

12:49PM 18 "CARISA GAVE MORE DETAILS ABOUT THE WIRE REQUEST. DO YOU WANT

12:49PM 19 ME TO SUBMIT A WIRE FOR MONDAY DELIVERY?"

12:49PM 20 DO YOU SEE THAT?

12:49PM 21 A. YES.

12:49PM 22 Q. AND IS THAT CONSISTENT WITH YOUR PRACTICE OF SEEKING

12:49PM 23 APPROVAL FROM MR. BALWANI FOR ALL WIRE TRANSFERS?

12:49PM 24 A. YES.

12:49PM 25 Q. PLEASE GO BACK IN YOUR BINDER TO EXHIBIT 5795. THIS

12:50PM 1 SHOULD BE IN VOLUME 2.

12:50PM 2 IS THIS AN EMAIL FROM YOU TO MR. BALWANI DATED JUNE 25TH,

12:50PM 3 2015?

12:50PM 4 A. YES.

12:50PM 5 Q. AND ARE YOU SEEKING APPROVAL FOR PAYMENT FOR ANOTHER

12:50PM 6 EXPENSE ASSOCIATED WITH THE COMPANY?

12:50PM 7 A. YES.

12:50PM 8 Q. AND DID YOU SEND THIS IN THE ORDINARY COURSE OF THERANOS'S

12:50PM 9 BUSINESS?

12:50PM 10 A. YES.

12:50PM 11 Q. IS THIS BASED ON INFORMATION FROM YOU OR PROVIDED TO YOU

12:50PM 12 BY PERSONS WITH KNOWLEDGE?

12:50PM 13 A. YES.

12:50PM 14 Q. AND WAS THIS KEPT IN THE ORDINARY COURSE OF BUSINESS?

12:50PM 15 A. YES.

12:50PM 16 Q. AND DID YOU DO YOUR BEST TO ACCURATELY SUMMARIZE FOR

12:50PM 17 MR. BALWANI WHAT YOU WERE SEEKING APPROVAL FOR?

12:50PM 18 A. YES.

12:51PM 19 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:51PM 20 EXHIBIT 5795.

12:51PM 21 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:51PM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:51PM 23 (GOVERNMENT'S EXHIBIT 5795 WAS RECEIVED IN EVIDENCE.)

12:51PM 24 BY MR. LEACH:

12:51PM 25 Q. MS. SPIVEY, I WANT TO DRAW YOUR ATTENTION TO THE SUBSTANCE

12:51PM 1 OF THE EMAIL.

12:51PM 2 YOU WROTE, "HI SUNNY.

12:51PM 3 "THIS WIRE IS REQUESTED BY HEATHER/EVAN AND IS FOR THE

12:51PM 4 REFERENCE MATTER OF ERIKA CHEUNG AND TYLER SHULTZ."

12:51PM 5 DO YOU SEE THAT?

12:51PM 6 A. YES.

12:51PM 7 Q. AND WHO DID YOU REFER TO -- WHO IS HEATHER?

12:51PM 8 A. HEATHER WAS THE GENERAL COUNSEL AT THERANOS.

12:51PM 9 Q. OKAY. AND WHO IS EVAN?

12:51PM 10 A. EVAN WAS AN ATTORNEY AT BOIES SCHILLER.

12:51PM 11 Q. AND WHAT IS BOIES SCHILLER?

12:51PM 12 A. IT'S A LAW FIRM THAT THERANOS USED.

12:51PM 13 Q. AND DID YOU HAVE OCCASION FROM TIME TO TIME TO INTERACT

12:51PM 14 WITH BOIES SCHILLER LAWYERS?

12:52PM 15 A. YES.

12:52PM 16 Q. YOU THEN WROTE -- AND YOU RECOGNIZE ERIKA CHEUNG AND

12:52PM 17 TYLER SHULTZ AS EMPLOYEES OR FORMER EMPLOYEES OF THERANOS?

12:52PM 18 A. YES.

12:52PM 19 Q. YOU THEN WROTE, "I AM ATTACHING THE ENGAGEMENT LETTER

12:52PM 20 BETWEEN BSF AND INTERFOR."

12:52PM 21 DO YOU SEE THAT?

12:52PM 22 A. YES.

12:52PM 23 Q. AND THERE'S A PROPOSED PAYMENT TO INTERFOR FOR

12:52PM 24 \$24,552.30.

12:52PM 25 DO YOU SEE THAT?

12:52PM 1 A. YES.

12:52PM 2 Q. AND IN THE COMMENTS IT SAYS LEGAL.

12:52PM 3 DO YOU SEE THAT?

12:52PM 4 A. YES.

12:52PM 5 Q. AND DO YOU KNOW WHETHER INTERFOR PROVIDES SOME TYPE OF

12:52PM 6 INVESTIGATIVE SERVICES?

12:52PM 7 MR. COOPERSMITH: OBJECTION. LEADING.

12:52PM 8 THE COURT: SUSTAINED.

12:52PM 9 BY MR. LEACH:

12:52PM 10 Q. BEFORE THIS EMAIL, DID YOU HAVE ANY INFORMATION ABOUT WHAT

12:52PM 11 INTERFOR DID?

12:52PM 12 A. I DON'T REMEMBER.

12:52PM 13 Q. WAS -- YOU KNOW THE NAME BOIES SCHILLER? THEY'RE A LAW

12:52PM 14 FIRM?

12:52PM 15 A. YES.

12:52PM 16 Q. DO YOU KNOW WHETHER INTERFOR IS A LAW FIRM?

12:53PM 17 A. I DO NOT KNOW.

12:53PM 18 Q. OKAY. LET ME DRAW YOUR ATTENTION TO EXHIBIT 5796.

12:53PM 19 DO YOU KNOW WHAT THIS DOCUMENT IS?

12:53PM 20 A. YES.

12:53PM 21 Q. AND WHAT IS IT?

12:53PM 22 A. IT'S THE SUMMARY OF EXPENSES BY CATEGORY.

12:53PM 23 Q. DID YOU PREPARE THIS IN THE ORDINARY COURSES OF THERANOS'S

12:53PM 24 BUSINESS?

12:53PM 25 A. YES.

12:53PM 1 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:53PM 2 EXHIBIT 5796.

12:53PM 3 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:53PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:54PM 5 (GOVERNMENT'S EXHIBIT 5796 WAS RECEIVED IN EVIDENCE.)

12:54PM 6 BY MR. LEACH:

12:54PM 7 Q. I THINK WE MIGHT HAVE TO USE THE NATIVE HERE.

12:54PM 8 MS. SPIVEY, I ONLY HAD ONE QUESTION ON THIS DOCUMENT. I

12:54PM 9 WANTED TO DRAW YOUR ATTENTION TO ROWS 26 AND 27.

12:54PM 10 DO YOU SEE THE NAMES E. CHEUNG AND T. SHULTZ PROJECT?

12:54PM 11 A. YES.

12:54PM 12 Q. AND DO YOU SEE THAT NAME INTERFOR AGAIN?

12:54PM 13 A. YES.

12:54PM 14 Q. AND ABOVE THAT THERE'S SOMEONE NAMED DAVID B. FECHHEIMER?

12:54PM 15 A. YES.

12:54PM 16 Q. AND DO YOU SEE THAT?

12:54PM 17 A. YES.

12:54PM 18 Q. AND DO YOU RECOGNIZE THAT NAME?

12:54PM 19 A. YES.

12:54PM 20 Q. AND ARE THESE AMOUNTS THAT WERE PAID TO THESE TWO VENDORS

12:54PM 21 AT SOME POINT IN THE TIME PERIOD OF 2015 TO 2016?

12:54PM 22 A. I'M NOT SURE ABOUT THE PAYMENT, BUT THIS IS THE AMOUNT

12:54PM 23 THAT THEY BILLED US.

12:54PM 24 Q. OKAY. ANY REASON TO DOUBT THAT YOU MADE THOSE PAYMENTS?

12:54PM 25 A. THERE MAY BE A TIMING DIFFERENCE.

12:54PM 1 Q. OTHER THAN THE TIMING DIFFERENCE, IS THERE ANY REASON TO
12:55PM 2 BELIEVE THAT YOU DIDN'T MAKE THOSE PAYMENTS?

12:55PM 3 A. NO.

12:55PM 4 Q. ONE LAST SUBJECT MATTER, MS. SPIVEY.

12:55PM 5 I'D LIKE TO DISPLAY FOR YOU WHAT IS IN EVIDENCE, WITH THE
12:55PM 6 COURT'S PERMISSION, IT'S EXHIBIT 5387H, WHICH IS IN EVIDENCE,
12:55PM 7 YOUR HONOR.

12:55PM 8 THE COURT: YES. THAT MAY BE PUBLISHED.

12:55PM 9 BY MR. LEACH:

12:55PM 10 Q. MS. SPIVEY, I'M DISPLAYING 5387H, AND I WANT TO DRAW YOUR
12:55PM 11 ATTENTION TO PAGE 4.

12:55PM 12 WAS THIS A DOCUMENT THAT YOU WERE FAMILIAR WITH AT YOUR
12:55PM 13 TIME AT THERANOS?

12:55PM 14 A. NO.

12:55PM 15 Q. OKAY. PRIOR TO TESTIFYING, DID YOU HAVE OCCASION TO LOOK
12:56PM 16 AT SOME OF THE TEXTS THAT ARE ON 5387H?

12:56PM 17 A. NO.

12:56PM 18 Q. OKAY. WELL, LET ME SHOW YOU PAGE 4.

12:56PM 19 DO YOU SEE THAT THERE APPEARS TO BE A TEXT AT -- ON 6/23
12:56PM 20 AT 12:24:55 A.M. TO EAH2003?

12:56PM 21 A. OH, YES.

12:56PM 22 Q. AND DO YOU SEE WHERE IT SAYS, "WE WILL GET A PLANE FOR
12:56PM 23 THESE SHORT JOURNEYS AFTER C2."

12:56PM 24 DO YOU SEE THAT?

12:56PM 25 A. YES.

12:56PM 1 Q. AND DOES THE TERM C2 HAVE ANY MEANING TO YOU IN YOUR WORK

12:56PM 2 AT THERANOS?

12:56PM 3 A. YES. IT'S A CLASSIFICATION OF THE -- ONE OF THE PREFERRED

12:56PM 4 SERIES.

12:56PM 5 Q. WHAT DO YOU MEAN BY "SERIES"?

12:57PM 6 A. ONE OF THE PREFERRED STOCK INVESTMENT.

12:57PM 7 Q. OKAY. DID THERANOS REFER TO DIFFERENT INVESTMENT ROUNDS

12:57PM 8 AS SERIES?

12:57PM 9 A. YES.

12:57PM 10 Q. AND DID THOSE HAVE NUMBERS OR LETTERS ASSOCIATED WITH

12:57PM 11 THEM?

12:57PM 12 A. YES.

12:57PM 13 Q. OKAY. AND WAS C2 ONE OF THEM?

12:57PM 14 A. YES.

12:57PM 15 Q. WAS THERE A C1?

12:57PM 16 A. YES.

12:57PM 17 Q. AND WAS THERE A B?

12:57PM 18 A. YES.

12:57PM 19 Q. OKAY. AND THIS IS SAYING, "WE WILL GET A PLANE FOR THESE

12:57PM 20 SHORT JOURNEYS AFTER C2."

12:57PM 21 IN THE 2014, 2015 TIME PERIOD, DID THERANOS PAY A VENDOR

12:57PM 22 FOR PRIVATE JETS FOR ITS EXECUTIVES?

12:57PM 23 MR. COOPERSMITH: OBJECTION, YOUR HONOR. SUBJECT TO

12:57PM 24 A PRIOR RULING BY THE COURT.

12:57PM 25 THE COURT: OVERRULED.

12:57PM 1 YOU CAN ANSWER THE QUESTION.

12:57PM 2 THE WITNESS: YES.

12:57PM 3 BY MR. LEACH:

12:57PM 4 Q. AND DID YOU HAVE RESPONSIBILITY FOR PAYING THOSE INVOICES?

12:57PM 5 A. YES.

12:57PM 6 Q. OKAY. LET'S LOOK AT PAGE 5. IF WE CAN ZOOM IN TOWARDS
12:58PM 7 THE BOTTOM.

12:58PM 8 I WANT TO DRAW YOUR ATTENTION TO THE FIRST TEXT IN THE
12:58PM 9 CHAIN, MAY 6TH, 2012 AT 8:46.

12:58PM 10 DO YOU SEE WHERE IT SAYS, "LOVE YOU. LET'S PUT EVERY
12:58PM 11 OUNCE OF ENERGY IN FOCUSING ON BREAKING EVEN AND GETTING TO
12:58PM 12 15M REVENUE PER MONTH IN OCTOBER AND EVERY MONTH AFTER THAT --
12:58PM 13 MINIMUM 15M."

12:58PM 14 DO YOU SEE THAT?

12:58PM 15 A. YES.

12:58PM 16 Q. DID THERANOS EVER BREAK EVEN?

12:58PM 17 A. NO.

12:58PM 18 Q. OKAY. AND DID THERANOS EVER ACHIEVE \$15 MILLION IN
12:58PM 19 REVENUE PER MONTH?

12:58PM 20 A. NO.

12:58PM 21 Q. AND THIS IS IN, ACCORDING TO THIS, 2012. WHAT WAS
12:58PM 22 THERANOS'S REVENUE IN 2012?

12:58PM 23 A. I BELIEVE IT WAS ZERO.

12:59PM 24 Q. OKAY. LET'S LOOK AT PAGE 8, PLEASE.

12:59PM 25 DO YOU SEE UP AT THE TOP THERE APPEARS TO BE A MESSAGE

12:59PM 1 FROM SUNNY BALWANI TO EAH2003 WITH THE DATE OF MAY 9TH, 2012?

12:59PM 2 A. YES.

12:59PM 3 Q. DO YOU SEE THAT?

12:59PM 4 A. YES.

12:59PM 5 Q. AND THIS SAYS, "MISSING YOU. THIS BUSINESS CANNOT BE

12:59PM 6 BUILT BY EITHER YOU OR I ALONE. THAT'S WHY THE UNIVERSE

12:59PM 7 BROUGHT US TOGETHER (AMONG OTHER BILLION REASONS). NO ON BUT

12:59PM 8 YOU AND I CAN BUILD THIS BUSINESS."

12:59PM 9 DO YOU SEE THAT LANGUAGE?

12:59PM 10 A. YES.

12:59PM 11 Q. AND THEN FURTHER BELOW EAH2003 WRITES, "WE HAVE TO WORK ON

12:59PM 12 THE REV PIECE."

12:59PM 13 DO YOU SEE THAT?

12:59PM 14 A. YES.

12:59PM 15 Q. AND YOU HAD DISCUSSIONS WITH MS. HOLMES FROM TIME TO TIME

12:59PM 16 ABOUT REVENUE AND CONCEPTS RELATING TO REVENUE; CORRECT?

01:00PM 17 A. YES.

01:00PM 18 Q. OKAY. FURTHER DOWN BELOW THERE'S A MESSAGE APPARENTLY

01:00PM 19 FROM MR. BALWANI TO EAH2003, "YOU ARE THE COMPANY. WE NEED

01:00PM 20 REVENUE PLUS FEW SENIOR LEVEL MANAGERS -- EXPERIENCED. EVEN IF

01:00PM 21 THEY ONLY WORK 11 HOURS X 5."

01:00PM 22 DO YOU SEE THAT LANGUAGE?

01:00PM 23 A. YES.

01:00PM 24 Q. AND AGAIN, YOU HAD DISCUSSIONS FROM TIME TO TIME WITH

01:00PM 25 MR. BALWANI ABOUT REVENUE?

01:00PM 1 A. YES.

01:00PM 2 Q. OKAY. LET'S LOOK AT PAGE 11. AND IF WE CAN ZOOM IN ON

01:00PM 3 THE TOP HALF, MS. WACHS.

01:00PM 4 DO YOU SEE IN THE FIRST TWO MESSAGES ASSOCIATED WITH

01:00PM 5 MR. BALWANI IT SAYS, "THE QD UPGRADE AND SYSTEM SETUP QUOTE IS

01:01PM 6 80K."

01:01PM 7 AND THEN IT SAYS, "QAD."

01:01PM 8 DO YOU SEE THAT?

01:01PM 9 A. YES.

01:01PM 10 Q. AND DOES THE TERM "QAD" HAVE ANY MEANING FOR YOU?

01:01PM 11 A. YES. THAT'S THE FINANCIAL SYSTEM THAT THERANOS USED.

01:01PM 12 Q. IT WAS THE FINANCIAL SYSTEM THAT THERANOS USED?

01:01PM 13 A. YES.

01:01PM 14 Q. OKAY. THERE'S ANOTHER MESSAGE; "WE WILL NEED A SOLID ERP

01:01PM 15 SYSTEM IN PLACE FOR GMP PRODUCTION AND THIS IS THE FASTEST WE

01:01PM 16 WILL BE. ORACLE OR SAP WILL TAKE US TO SEPTEMBER OCTOBER."

01:01PM 17 AND THEN FURTHER ON IT SAYS, "WE CAN'T MAKE A MULTI YEAR

01:01PM 18 2M COMMITMENT TO ORACLE UNTIL WE ARE CASH FLOW POSITIVE OR AT

01:01PM 19 LEAST BREAK EVEN."

01:01PM 20 DO YOU SEE THAT?

01:01PM 21 A. YES.

01:01PM 22 Q. DID THERANOS EVER SHIFT FROM THE QAD SYSTEM TO SOMETHING

01:02PM 23 ELSE?

01:02PM 24 A. NO.

01:02PM 25 Q. WAS THERANOS EVER CASH FLOW POSITIVE?

01:02PM 1 A. NO.

01:02PM 2 Q. DID THERANOS EVER BREAK EVEN?

01:02PM 3 A. NO.

01:02PM 4 Q. LET'S LOOK AT PAGE 12, PLEASE. IF WE CAN ZOOM IN AT THE

01:02PM 5 BOTTOM.

01:02PM 6 DO YOU SEE THE DATE OF APRIL 20TH, 2013, MS. SPIVEY?

01:02PM 7 A. YES.

01:02PM 8 Q. AND DO YOU SEE WHERE IN THE FIRST MESSAGE IT SAYS,

01:02PM 9 "MANIFEST THE 150M WE SPOKE ABOUT. I AM GOING TO FOCUS ON THE

01:02PM 10 CHANGES TO 2 CONTRACTS WE TALKED ABOUT TO GET ADDITIONAL DOLLAR

01:02PM 11 SIGN FROM BANKS."

01:02PM 12 DO YOU SEE THAT LANGUAGE?

01:02PM 13 A. YES.

01:02PM 14 Q. AND THEN FURTHER BELOW IT SAYS -- THERE'S A MESSAGE, THE

01:02PM 15 FOURTH MESSAGE DOWN, "I DON'T WANT TO DO ANYMORE CALLS WITH NC

01:03PM 16 AND MA AND PAUL AND CO. REALLY TAKES A LOT OUT OF ME."

01:03PM 17 DO YOU SEE THAT LANGUAGE?

01:03PM 18 A. YES.

01:03PM 19 Q. DURING THIS TIME PERIOD, DID THERANOS HAVE A CONTRACT WITH

01:03PM 20 BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA?

01:03PM 21 A. YES.

01:03PM 22 Q. AND WAS THAT THE MONEY THAT WAS REFUNDED THAT WE LOOKED AT

01:03PM 23 EARLIER?

01:03PM 24 A. YES.

01:03PM 25 Q. AND DID THERANOS ALSO HAVE A CONTRACT WITH BLUE CROSS AND

01:03PM 1 BLUE SHIELD OF MASSACHUSETTS?

01:03PM 2 A. YES.

01:03PM 3 Q. AND WAS THAT MONEY REFUNDED?

01:03PM 4 A. YES.

01:03PM 5 Q. LET'S LOOK AT PAGE 13, PLEASE. AND IF WE CAN ZOOM IN ON
01:03PM 6 THE TOP.

01:03PM 7 I DRAW YOUR ATTENTION, MS. SPIVEY, TO THE THIRD TEXT WHERE
01:03PM 8 IT SAYS, "I JUST DON'T WANT ANYONE FROM OUR COMPANY DEALING
01:04PM 9 WITH THEM. GET THEM THE MONEY. IF YOU SEE OUR HOSPITAL MODEL,
01:04PM 10 WE WILL MINT MONEY THERE ONCE WE GET OUR DEVICE PERFECTED."

01:04PM 11 DO YOU SEE THAT?

01:04PM 12 A. YES.

01:04PM 13 Q. AND IN THIS TIME PERIOD, 2013, DID YOU UNDERSTAND THAT
01:04PM 14 THERANOS WAS WORKING ON A DEVICE THAT IT WAS MANUFACTURING?

01:04PM 15 A. YES.

01:04PM 16 Q. WHAT -- DID YOU HAVE ANY ROLE IN THAT, OR DID YOU JUST
01:04PM 17 ACCOUNT FOR HOW MONEY WAS SPENT?

01:04PM 18 A. CORRECT, I ONLY ACCOUNT FOR THE MONEY THAT WAS SPENT.

01:04PM 19 Q. OKAY. IF YOU COULD PLEASE NOW LOOK AT PAGE 18, IF WE CAN
01:04PM 20 DISPLAY IT.

01:04PM 21 DO YOU SEE THE DATE OF NOVEMBER 21ST, 2013?

01:04PM 22 A. YES.

01:04PM 23 Q. AND DO YOU SEE THERE APPEARS TO BE A MESSAGE FROM
01:04PM 24 MR. BALWANI, "U SHOULD MAKE URSELF COMFORTABLE WITH FINANCIAL
01:05PM 25 MODELS. ALTERNATIVELY, U CAN COVER EVERYTHING ELSE AND I CAN

01:05PM 1 MEET WITH HIM ON TUESDAY AND ANSWER ANY QUESTIONS."

01:05PM 2 DO YOU SEE THAT LANGUAGE?

01:05PM 3 A. YES.

01:05PM 4 Q. OKAY. AND IF WE COULD GO TO THE NEXT PAGE WITH THAT IN

01:05PM 5 MIND.

01:05PM 6 DO YOU SEE WHERE MS. HOLMES WROTE, OR APPEARS TO WRITE,

01:05PM 7 "WHAT ARE YOUR THOUGHTS ON SENDING FINANCIALS TO DFJ EVEN

01:05PM 8 THOUGH WE'VE NEVER SENT THEM AS AN EXISTING INVESTOR/ON SENDING

01:05PM 9 OTHER CONTENT TO THEM AT THIS STAGE."

01:05PM 10 AND THE NEXT LINE, "PROJECTS INCLUDE BS AND 2013 NUMBERS.

01:05PM 11 I GUESS IT IS OK."

01:05PM 12 DO YOU SEE THAT LANGUAGE?

01:05PM 13 A. YES.

01:05PM 14 Q. AND BS WAS AN ACRONYM THAT YOU WOULD USE FROM TIME TO TIME

01:05PM 15 WITH MS. HOLMES FOR BALANCE SHEET; IS THAT CORRECT?

01:05PM 16 A. CORRECT.

01:05PM 17 Q. IF WE CAN NOW PLEASE LOOK AT PAGE 22.

01:06PM 18 DO YOU SEE THE DATE NOVEMBER 28TH, 2013?

01:06PM 19 A. YES.

01:06PM 20 Q. AND THERE'S AN ENTRY APPARENTLY FROM MR. BALWANI, "WE ARE

01:06PM 21 AT 15M AS OF TODAY."

01:06PM 22 DO YOU SEE THAT LANGUAGE?

01:06PM 23 A. YES.

01:06PM 24 Q. AND THEN IT SAYS, "FREE CASH."

01:06PM 25 AND MS. HOLMES APPEARS TO REPLY, "I SAW THAT.

01:06PM 1 "DROP BY TO DISCUSS WHEN U CAN."

01:06PM 2 DO YOU SEE THAT LANGUAGE?

01:06PM 3 A. YES.

01:06PM 4 Q. I'D LIKE YOU TO KEEP THAT DATE OF NOVEMBER 28TH, 2013, AND

01:06PM 5 THAT TIME PERIOD IN MIND, MS. SPIVEY, IF YOU CAN.

01:06PM 6 AND IF WE CAN PLEASE GO BACK TO 5172, MS. WACHS. IF WE

01:07PM 7 CAN GO TO COLUMN EW.

01:07PM 8 IS THIS THE COLUMN FOR THE TIME PERIOD NOVEMBER 25TH,

01:07PM 9 2013, TO DECEMBER 1ST, 2015?

01:07PM 10 A. YES.

01:07PM 11 Q. THE TIME PERIOD THAT WE SAW IN THE TEXT MESSAGE?

01:07PM 12 A. YES.

01:07PM 13 Q. OKAY. AND IT SAYS TOTAL CASH BALANCES, \$23,300,812.

01:07PM 14 DO YOU SEE THAT?

01:07PM 15 A. YES.

01:07PM 16 Q. AND WHAT WOULD THE AMOUNT BE IF YOU DON'T COUNT THE

01:07PM 17 7.5 MILLION FROM THE LETTER OF CREDIT?

01:07PM 18 A. YOU SUM UP THE TOP THREE.

01:07PM 19 Q. OKAY. WOULD THAT BE ABOUT 15.5 MILLION?

01:07PM 20 A. YES.

01:08PM 21 Q. LET'S PLEASE GO BACK TO 5387H AND LOOK AT PAGE 71.

01:08PM 22 DO YOU SEE THE DATE OF MAY 6TH, 2015?

01:08PM 23 A. YES.

01:08PM 24 Q. AND THIS SAYS, THE FIRST ENTRY APPARENTLY FROM

01:08PM 25 MR. BALWANI, "WE NEED OUR HEADS DOWN AND EXECUTE. BRING

01:08PM 1 BILLION EQUITY AND BILLION REVENUE."

01:08PM 2 DO YOU SEE THAT?

01:08PM 3 A. YES.

01:08PM 4 Q. AND DID THERANOS EVER ACHIEVE A BILLION DOLLARS IN

01:08PM 5 REVENUE?

01:08PM 6 A. NO.

01:08PM 7 Q. LET'S GO TO PAGE 92.

01:09PM 8 LET ME DRAW YOUR ATTENTION TO THE FIRST TEXT BENEATH THE

01:09PM 9 BLACK PORTION, MS. SPIVEY, AT 4:44:48 P.M. ON JULY 15TH, 2015.

01:09PM 10 IT SAYS, "I WORKED 6 YEARS DAY AND NIGHT TO HELP YOU. I

01:09PM 11 AM SAD AT WHERE YOU AND I ARE. I THOUGHT IT WOULD BE BETTER.

01:09PM 12 I KNOW UR ANGRY IN UR WAY. AND UPSET WITH ME FOR NOT DOING

01:09PM 13 EVERYTHING YOU WANTED ME TO DO."

01:09PM 14 DO YOU SEE THAT LANGUAGE?

01:09PM 15 A. YES.

01:09PM 16 Q. AND FURTHER DOWN DO YOU SEE A TEXT THAT READS, "I AM

01:09PM 17 RESPONSIBLE FOR EVERYTHING AT THERANOS. ALL HAVE BEEN MY

01:09PM 18 DECISIONS TOO."

01:09PM 19 DO YOU SEE THAT?

01:09PM 20 A. YES.

01:09PM 21 Q. AND OTHER THAN MS. HOLMES AND MR. BALWANI, WERE THERE ANY

01:10PM 22 OTHER SENIOR LEADERS WITHIN THERANOS?

01:10PM 23 A. YES.

01:10PM 24 Q. WHO?

01:10PM 25 A. WELL, I GUESS CAN YOU DEFINE WHAT "SENIOR LEADER" MEANS?

01:10PM 1 Q. LET ME ASK A BETTER QUESTION.

01:10PM 2 WHAT WAS MR. BALWANI'S TITLE AT THE TIME WHEN HE CAME ON

01:10PM 3 TO THE COMPANY?

01:10PM 4 A. HE WAS THE CHIEF OPERATING OFFICER AND PRESIDENT.

01:10PM 5 Q. OKAY. AND WHAT WAS MS. HOLMES'S TITLE?

01:10PM 6 A. CHIEF EXECUTIVE OFFICER.

01:10PM 7 Q. OKAY. AND WAS THERE ANYBODY MORE SENIOR THAN THE COO AND

01:10PM 8 THE CEO OF THE COMPANY?

01:10PM 9 A. NO.

01:10PM 10 Q. FURTHER DOWN BELOW THERE'S AN ENTRY AT 4:49. "I AM NOT

01:10PM 11 LEAVING UNTIL WE BREAK EVEN. WE WILL DO THIS TOGETHER AND I

01:10PM 12 WILL BE BY YOURSELF UNTIL THEN. CAN'T LEAVE LIKE THIS."

01:11PM 13 DO YOU SEE THAT LANGUAGE?

01:11PM 14 A. YES.

01:11PM 15 Q. AND DID THERANOS EVER BREAK EVEN?

01:11PM 16 A. NO.

01:11PM 17 Q. OKAY. AND IF WE CAN GO TO THE NEXT PAGE, PAGE 93. ZOOM

01:11PM 18 IN ON THE TOP PORTION.

01:11PM 19 DO YOU SEE THERE'S A -- THE FOURTH TEXT DOWN, "THINGS ARE

01:11PM 20 DIFFERENT NOW. WE NEED TO GET THE BUSINESS TO BREAK EVEN AND

01:11PM 21 THEN I WILL LEAVE. WE R DIFFERENT WHEN IT COMES TO BUSINESS.

01:11PM 22 WE WILL BE HAPPIER THAT WAY. BUT FOR NOW, U AND I BOTH ARE ON

01:11PM 23 SAME PAGE BECAUSE OF YESTERDAY THAT WE NEED TO BREAK EVEN."

01:11PM 24 DO YOU SEE THAT LANGUAGE?

01:11PM 25 A. YES.

01:11PM 1 Q. AND THEN FURTHER DOWN DO YOU SEE WHERE IT SAYS, "STAY
01:11PM 2 INTERNALLY FOCUSSED AND ONLY MEET WITH PEOPLE WHO HAVE DEALS IN
01:11PM 3 HAND. THE PR STRATEGY IS WRONG AND I HAVE BEEN SAYING THAT.
01:11PM 4 WE NEED TO GO ON OFFENSE AND NOT BE DEFENSIVE."

01:11PM 5 DO YOU SEE THAT LANGUAGE?

01:12PM 6 A. YES.

01:12PM 7 Q. AND THEN IN THE LAST ENTRY, "CORRECT. ONLY FIX IS CASH
01:12PM 8 AND BREAK EVEN. ONCE WE HAVE THAT, U WON'T NEED ME."

01:12PM 9 DO YOU SEE THAT LANGUAGE?

01:12PM 10 A. YES.

01:12PM 11 Q. AND THE COMPANY NEVER GOT TO BREAK EVEN DURING YOUR TIME
01:12PM 12 PERIOD?

01:12PM 13 A. NO.

01:12PM 14 MR. LEACH: MAY I HAVE A MOMENT, YOUR HONOR?

01:12PM 15 THE COURT: YES.

01:12PM 16 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

01:12PM 17 MR. LEACH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

01:12PM 18 THANK YOU, MS. SPIVEY.

01:12PM 19 THE COURT: MR. COOPERSMITH, DO YOU HAVE QUESTIONS?

01:12PM 20 MR. COOPERSMITH: YES, YOUR HONOR. MAYBE IF WE
01:12PM 21 COULD HAVE A STANDING BREAK.

01:12PM 22 THE COURT: WELL, WE'LL TAKE OUR RECESS NOW.

01:12PM 23 LADIES AND GENTLEMEN, WE'LL TAKE OUR AFTERNOON RECESS,
01:12PM 24 TAKE 30 MINUTES NOW, AND THEN WE'LL RESUME.

01:12PM 25 MR. COOPERSMITH: YES, YOUR HONOR.

01:12PM 1 (RECESS FROM 1:12 P.M. UNTIL 1:47 P.M.)

01:47PM 2 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

01:47PM 3 ALL COUNSEL ARE PRESENT, MR. BALWANI IS PRESENT.

01:47PM 4 OUR JURY AND ALTERNATES ARE PRESENT, AS IS MS. SPIVEY.

01:47PM 5 COUNSEL, YOU HAVE CROSS-EXAMINATION?

01:47PM 6 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

01:47PM 7 MAY I REMOVE MY MASK?

01:47PM 8 THE COURT: YES.

01:47PM 9 MR. COOPERSMITH: AND I HAVE A COUPLE OF BINDERS FOR

01:47PM 10 THE COURT, IF I COULD JUST HAND THEM TO MS. ROBINSON.

01:47PM 11 THE COURT: SURE.

01:47PM 12 MR. COOPERSMITH: MIGHT I APPROACH THE WITNESS AS

01:47PM 13 WELL, YOUR HONOR?

01:47PM 14 THE COURT: YES.

01:47PM 15 MR. COOPERSMITH: (HANDING.)

01:48PM 16 **CROSS-EXAMINATION**

01:48PM 17 BY MR. COOPERSMITH:

01:48PM 18 Q. GOOD AFTERNOON, MS. SPIVEY.

01:48PM 19 A. GOOD AFTERNOON.

01:48PM 20 Q. AND I THINK WE'LL BE GOING UNTIL 4:00 TODAY, AND I'M GOING

01:48PM 21 TO BE ASKING YOU SOME QUESTIONS ON CROSS-EXAMINATION.

01:48PM 22 OKAY?

01:48PM 23 A. YES.

01:48PM 24 Q. AND I'VE HANDED YOU TWO BINDERS AND I'LL BE REFERRING TO

01:48PM 25 THEM FROM TIME TO TIME.

01:48PM 1 I MAY ALSO REFER TO THE BINDERS YOU SAW THIS MORNING WHEN
01:48PM 2 THE GOVERNMENT WAS EXAMINING YOU, SO DON'T PUT THOSE TOO FAR
01:48PM 3 AWAY, I GUESS. OKAY?

01:48PM 4 ALL RIGHT. LET'S JUST START WITH YOUR BACKGROUND. I KNOW
01:48PM 5 THAT MR. LEACH WENT INTO THIS A LITTLE BIT, BUT YOU'RE A
01:48PM 6 CERTIFIED PUBLIC ACCOUNTANT; IS THAT RIGHT?

01:48PM 7 A. YES.

01:48PM 8 Q. AND THAT'S WHAT YOU'VE DONE IN YOUR CAREER SINCE YOU'VE
01:48PM 9 GRADUATED FROM COLLEGE IT SOUNDS LIKE?

01:48PM 10 A. YES.

01:48PM 11 Q. AND AT SOME POINT YOU ALSO GOT A MASTERS OF BUSINESS
01:48PM 12 ADMINISTRATION?

01:48PM 13 A. YES.

01:48PM 14 Q. AND THAT WAS FROM THE UNIVERSITY OF ROCHESTER, I THINK, IN
01:48PM 15 UPSTATE NEW YORK?

01:48PM 16 A. YES.

01:48PM 17 Q. AND HOW LONG DID YOU WORK IN HONG KONG BEFORE YOU CAME
01:48PM 18 BACK TO WORK IN THE UNITED STATES?

01:48PM 19 A. ABOUT FOUR YEARS.

01:48PM 20 Q. OKAY. AND THAT WAS AT DELOITTE YOU SAID?

01:49PM 21 A. YES.

01:49PM 22 Q. AND AS AN ACCOUNTANT, IT'S YOUR JOB TO TRY TO BE AS
01:49PM 23 ACCURATE AS POSSIBLE WITH KEEPING THE BOOKS AND RECORDS OF
01:49PM 24 COMPANIES, OR AUDITING COMPANIES, WHATEVER THE TASK MAY BE; IS
01:49PM 25 THAT FAIR?

01:49PM 1 A. YES.

01:49PM 2 Q. AND THAT'S WHAT YOU DID AT THERANOS?

01:49PM 3 A. YES.

01:49PM 4 Q. AND IN NO WAY DID YOU EVER TRY TO FALSIFY ANYTHING OR

01:49PM 5 PROVIDE ANYBODY WITH INACCURATE INFORMATION AT ANY TIME AT

01:49PM 6 THERANOS; IS THAT RIGHT?

01:49PM 7 A. CORRECT.

01:49PM 8 Q. NOW, YOU WORKED AT THERANOS, I THINK YOU SAID, FROM 2006

01:49PM 9 TO 2017?

01:49PM 10 A. YES.

01:49PM 11 Q. SO IT SOUNDS LIKE YOU STARTED AT THERANOS BEFORE

01:49PM 12 MR. BALWANI JOINED THE COMPANY; IS THAT RIGHT?

01:49PM 13 A. YES.

01:49PM 14 Q. AND YOU STAYED AT THERANOS AFTER MR. BALWANI LEFT THE

01:49PM 15 COMPANY?

01:49PM 16 A. YES.

01:49PM 17 Q. OKAY. AND WHEN YOU LEFT THE COMPANY, WHY DID YOU LEAVE?

01:49PM 18 A. THE COMPANY OUTSOURCED THE ACCOUNTING FUNCTION, SO THEY

01:49PM 19 LAID OFF THE WHOLE ACCOUNTING TEAM.

01:49PM 20 Q. OKAY. SO IT WAS BASICALLY A LAYOFF AT THAT POINT?

01:49PM 21 A. YES.

01:49PM 22 Q. SO IT WASN'T THAT YOU QUIT OR SOMETHING BECAUSE YOU WERE

01:50PM 23 HAVING TROUBLE WITH THE COMPANY OR ANYTHING LIKE THAT AT THAT

01:50PM 24 POINT?

01:50PM 25 A. CORRECT.

01:50PM 1 Q. AND WHILE YOU WERE THERE AT THERANOS FROM 2006 TO 2017, I
01:50PM 2 AM ASSUMING THE COMPANY GREW IN SIZE OVER THAT TIME?
01:50PM 3 A. YES.
01:50PM 4 Q. AND ABOUT HOW MANY EMPLOYEES WERE THERE WHEN YOU FIRST
01:50PM 5 STARTED IN 2006?
01:50PM 6 A. ABOUT 60.
01:50PM 7 Q. SIXTY?
01:50PM 8 A. YES.
01:50PM 9 Q. OKAY. AND OVER TIME DID THE COMPANY ADD A LOT OF
01:50PM 10 ADDITIONAL EMPLOYEES FROM, LET'S SAY, DURING THE TIME THAT
01:50PM 11 MR. BALWANI WAS THERE FROM 2009 TO 2016?
01:50PM 12 A. YES.
01:50PM 13 Q. AND YOU KNEW THAT BECAUSE YOU WERE WORKING WITH PAYROLL
01:50PM 14 AND THAT SORT OF THING?
01:50PM 15 A. CORRECT.
01:50PM 16 Q. AND YOU ALSO MET SOME OF THOSE PEOPLE WHO JOINED THE
01:50PM 17 COMPANY, I'M ASSUMING.
01:50PM 18 A. CAN YOU REPEAT?
01:50PM 19 Q. YOU ALSO MET PEOPLE, VARIOUS EMPLOYEES WHO HAD DIFFERENT
01:50PM 20 FUNCTIONS AND DIFFERENT JOBS AT THERANOS; RIGHT?
01:50PM 21 A. YES.
01:50PM 22 Q. AND A LOT OF THEM WERE SCIENTISTS?
01:51PM 23 A. YES.
01:51PM 24 Q. AND WOULD IT BE FAIR TO SAY THAT FROM THE TIME THAT
01:51PM 25 MR. BALWANI JOINED UNTIL MR. BALWANI LEFT, THE COMPANY HIRED

01:51PM 1 QUITE A LOT OF SCIENTISTS TO WORK ON THERANOS'S RESEARCH AND
01:51PM 2 DEVELOPMENT PROJECTS?

01:51PM 3 A. YES.

01:51PM 4 Q. AND OTHER THINGS THAT THE COMPANY WAS DOING?

01:51PM 5 A. YES.

01:51PM 6 Q. AND DID YOU BELIEVE THAT, AS YOU UNDERSTOOD IT, THAT THOSE
01:51PM 7 SCIENTISTS WERE WORKING HARD EVERY DAY TO TRY TO MAKE THERANOS
01:51PM 8 AS GOOD A COMPANY AS IT COULD POSSIBLY BE?

01:51PM 9 MR. LEACH: FOUNDATION. RELEVANCE. OBJECTION.

01:51PM 10 THE COURT: DO YOU WANT TO -- I'M NOT CERTAIN ABOUT
01:51PM 11 HER PERSONAL KNOWLEDGE. MAYBE YOU COULD ASK IT A DIFFERENT WAY
01:51PM 12 ABOUT HER OBSERVATIONS OF THE ESPRIT DE CORPS. IS THAT WHAT
01:51PM 13 YOU'RE TRYING TO DETERMINE?

01:51PM 14 MR. COOPERSMITH: PERHAPS, YOUR HONOR, BUT I'M HAPPY
01:51PM 15 TO ASK SOME MORE QUESTIONS.

01:51PM 16 Q. SO DID YOU OBSERVE PEOPLE WORKING AT THERANOS, INCLUDING
01:51PM 17 PEOPLE ON THE SCIENTIFIC TEAM?

01:51PM 18 A. UM --

01:51PM 19 Q. DID YOU OBSERVE EMPLOYEES WORKING AT THERANOS IN
01:51PM 20 ADDITION -- BESIDES YOURSELF, DID YOU SEE A LOT OF PEOPLE
01:52PM 21 WORKING AT THERANOS?

01:52PM 22 A. YES.

01:52PM 23 Q. AND THAT INCLUDED THE SCIENTIFIC TEAM?

01:52PM 24 A. YES.

01:52PM 25 Q. AND FROM YOUR OBSERVATIONS, YOUR OWN PERSONAL

01:52PM 1 OBSERVATIONS, WHAT DID YOU OBSERVE ABOUT THE SCIENTISTS WORKING
01:52PM 2 AT THERANOS IN TERMS OF THEIR EFFORTS?

01:52PM 3 A. LIKE SOMETIMES WHEN I WORK, I THINK WE ALL -- MANY OF US,
01:52PM 4 WE WORK, LIKE, LONG HOURS, AND SOMETIMES WE HAVE DINNER
01:52PM 5 TOGETHER, AND WE'RE ALL -- MANY OF US ARE TRYING VERY HARD.

01:52PM 6 Q. AND THAT INCLUDED YOURSELF?

01:52PM 7 A. RIGHT.

01:52PM 8 Q. AND DID YOU OBSERVE -- YOU ALSO OBSERVED -- I'M SORRY.
01:52PM 9 LET ME SCRATCH THAT.

01:52PM 10 YOU ALSO OBSERVED MR. BALWANI WORKING VERY HARD EVERY DAY;
01:52PM 11 IS THAT RIGHT?

01:52PM 12 A. YES.

01:52PM 13 Q. HE WAS OFTEN IN THE OFFICE VERY LATE HOURS?

01:52PM 14 A. YES.

01:52PM 15 Q. AND SOMETIMES UNTIL LONG AFTER YOU LEFT FOR THE DAY?

01:52PM 16 A. I DON'T KNOW.

01:52PM 17 Q. OKAY. BUT SOMETIMES HE WAS STILL THERE WHEN YOU LEFT?

01:52PM 18 A. I DON'T REMEMBER BECAUSE HE'S ON A DIFFERENT FLOOR.

01:52PM 19 Q. OKAY. BUT YOU DID OBSERVE THAT HE WAS WORKING VERY LONG
01:53PM 20 HOURS AT THERANOS?

01:53PM 21 A. YES.

01:53PM 22 Q. AND MS. HOLMES AS WELL?

01:53PM 23 A. YES.

01:53PM 24 Q. AND DID YOU HAVE ANY DOUBT ABOUT THEIR WORK ETHIC?

01:53PM 25 A. I DON'T KNOW.

01:53PM 1 Q. OKAY. AND YOU UNDERSTOOD THAT THEY WERE WORKING AT
01:53PM 2 THERANOS TO TRY TO MAKE THE COMPANY AS GOOD A COMPANY AS IT
01:53PM 3 COULD POSSIBLY BE?

01:53PM 4 MR. LEACH: OBJECTION. 602. FOUNDATION.

01:53PM 5 THE COURT: SUSTAINED. SUSTAINED.

01:53PM 6 BY MR. COOPERSMITH:

01:53PM 7 Q. SO IN TERMS OF YOUR JOB, YOU WERE, AMONG OTHER THINGS
01:53PM 8 PERHAPS, YOU WERE KEEPING TRACK OF THE FINANCIAL MATTERS AT
01:53PM 9 THERANOS; IS THAT RIGHT?

01:53PM 10 A. YES.

01:53PM 11 Q. AND YOU IN YOUR POSITION SAW HOW THE COMPANY WAS GETTING
01:53PM 12 MONEY AND ALSO SPENDING MONEY; IS THAT FAIR?

01:53PM 13 A. YES.

01:53PM 14 Q. AND IN THAT CONNECTION, YOU SAW THE COMPANY WAS SPENDING A
01:53PM 15 LOT OF MONEY ON RESEARCH AND DEVELOPMENT PROJECTS; IS THAT
01:53PM 16 FAIR?

01:53PM 17 A. YES.

01:53PM 18 Q. AND THAT WAS DURING THE WHOLE TIME THAT YOU WERE THERE; IS
01:53PM 19 THAT RIGHT?

01:53PM 20 A. YES.

01:53PM 21 Q. AND THE RESEARCH AND DEVELOPMENT PROJECTS WERE DESIGNED TO
01:54PM 22 INVENT NEW PRODUCTS?

01:54PM 23 A. YES.

01:54PM 24 Q. AND USE THOSE PRODUCTS?

01:54PM 25 A. YES.

01:54PM 1 Q. AND DID YOU ALSO OBSERVE THAT THERE WAS MONEY BEING SPENT
01:54PM 2 ON THINGS LIKE ATTORNEYS?
01:54PM 3 A. ON WHAT?
01:54PM 4 Q. DID THE COMPANY SPEND MONEY ON LAW FIRMS AND ATTORNEYS?
01:54PM 5 A. YES.
01:54PM 6 Q. AND DID THE COMPANY SPEND MONEY ON USING THOSE ATTORNEYS
01:54PM 7 IN OTHER MEANS TO OBTAIN PATENTS?
01:54PM 8 A. YES.
01:54PM 9 Q. AND YOU KNEW THAT BECAUSE YOU SAW THE EXPENDITURES; RIGHT?
01:54PM 10 A. CORRECT.
01:54PM 11 Q. DURING THE TIME THAT YOU REPORTED TO -- I'M SORRY.
01:54PM 12 DURING THE TIME THAT YOU WORKED AT THERANOS, AT ALL TIMES
01:54PM 13 YOU REPORTED DIRECTLY TO ELIZABETH HOLMES?
01:54PM 14 A. AFTER 2008, THEN I REPORTED DIRECTLY TO ELIZABETH HOLMES.
01:54PM 15 Q. OKAY. YOU MEAN WHEN THE CFO LEFT?
01:54PM 16 A. WHEN THE CFO AND THE SENIOR DIRECTOR OF FINANCE LEFT.
01:55PM 17 Q. I SEE. SO IT'S 2008, AND THAT WAS BEFORE MR. BALWANI
01:55PM 18 JOINED THE COMPANY?
01:55PM 19 A. CORRECT.
01:55PM 20 Q. AND SO STARTING IN 2008 ALL OF THE WAY THROUGH 2017, THE
01:55PM 21 WHOLE TIME YOU REPORTED DIRECTLY TO MS. HOLMES?
01:55PM 22 A. YES.
01:55PM 23 Q. AND YOU ALSO HAD INTERACTION WITH MR. BALWANI?
01:55PM 24 A. YES.
01:55PM 25 Q. BUT YOU DIDN'T REPORT DIRECTLY TO HIM?

01:55PM 1 A. CORRECT.

01:55PM 2 Q. OKAY. LET'S TALK ABOUT WHEN MR. BALWANI JOINED THE

01:55PM 3 COMPANY.

01:55PM 4 SO THAT WAS IN 2009?

01:55PM 5 A. YES.

01:55PM 6 Q. AND EVEN BEFORE HE JOINED THE COMPANY, YOU WERE AWARE THAT

01:55PM 7 HE GUARANTEED A LOAN FOR THE COMPANY?

01:55PM 8 A. IT WAS ABOUT THE SAME TIME, SO I DON'T REMEMBER IF IT WAS

01:55PM 9 BEFORE HE JOINED OR --

01:55PM 10 Q. I SEE. AROUND THE SAME TIME THAT HE JOINED, YOU WERE

01:55PM 11 AWARE THAT HE GUARANTEED A LOAN FOR THE COMPANY?

01:55PM 12 A. YES.

01:55PM 13 Q. OKAY. IF YOU COULD TAKE A LOOK IN THE BINDER THAT I JUST

01:55PM 14 HANDED YOU, IT SHOULD BE THE FIRST BINDER, IT'S EXHIBIT 20505.

01:56PM 15 DO YOU HAVE THAT IN FRONT OF YOU?

01:56PM 16 A. YES.

01:56PM 17 Q. AND DO YOU SEE THAT IT'S A DOCUMENT DATED AS OF

01:56PM 18 AUGUST 13TH, 2009, AND IT'S SIGNED BY MR. BALWANI?

01:56PM 19 A. YES.

01:56PM 20 Q. AND YOU RECOGNIZE MR. BALWANI'S SIGNATURE?

01:56PM 21 A. YES.

01:56PM 22 Q. AND YOU SEE IT'S REGARDING A LOAN AGREEMENT, IT REFERENCES

01:56PM 23 A LOAN CUSTOMER AGREEMENT BETWEEN THERANOS AND FIDELITY.

01:56PM 24 DO YOU SEE THAT?

01:56PM 25 A. YES.

01:56PM 1 Q. OKAY. AND DO YOU RECOGNIZE THIS AS A LOAN AGREEMENT THAT
01:57PM 2 MR. BALWANI SIGNED IN CONNECTION WITH THE LOAN TO THERANOS THAT
01:57PM 3 WE WERE JUST DISCUSSING?

01:57PM 4 A. YES.

01:57PM 5 MR. COOPERSMITH: YOUR HONOR, I WOULD MOVE TO ADMIT
01:57PM 6 20505.

01:57PM 7 MR. LEACH: NO OBJECTION, YOUR HONOR.

01:57PM 8 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:57PM 9 (DEFENDANT'S EXHIBIT 20505 WAS RECEIVED IN EVIDENCE.)

01:57PM 10 BY MR. COOPERSMITH:

01:57PM 11 Q. OKAY. LOOKING AT THE DOCUMENT -- AND IF YOU WOULD JUST
01:57PM 12 HIGHLIGHT THE FIRST PARAGRAPH, MR. ALLEN.

01:57PM 13 IT SAYS, "REFERENCE IS MADE TO THAT CERTAIN NON-PURPOSE
01:57PM 14 LOAN CUSTOMER AGREEMENT BY THERANOS INC., A DELAWARE
01:57PM 15 CORPORATION, IN FAVOR OF FIDELITY BROKERAGE SERVICES AND
01:57PM 16 NATIONAL FINANCIAL SERVICES DATED AUGUST 13TH, 2009."

01:57PM 17 DO YOU SEE THAT?

01:57PM 18 A. YES.

01:57PM 19 Q. AND THEN IT SAYS -- IT GOES ON IN SUBSECTION B THERE TO
01:57PM 20 SAY THAT CERTAIN CROSS GUARANTEED FORM DATED AUGUST 13TH, 2009
01:57PM 21 BY MYSELF AS GUARANTOR.

01:57PM 22 YOU UNDERSTAND THAT IS THE GUARANTEE FORM THAT MR. BALWANI
01:58PM 23 HAD TO SIGN IN ORDER TO GUARANTEE THIS LOAN?

01:58PM 24 A. YES.

01:58PM 25 Q. AND THEN IF YOU GO ON TO THE NEXT PARAGRAPH, DO YOU SEE IT

01:58PM 1 READS, "I HEREBY AFFIRM THAT UNDER THE CROSS GUARANTEE, I'VE

01:58PM 2 GUARANTEED THE OBLIGATIONS OF THE BORROWER UNDER THE LOAN

01:58PM 3 AGREEMENT, SECURED BY CERTAIN PROPERTY, THE COLLATERAL."

01:58PM 4 DO YOU SEE THAT?

01:58PM 5 A. YES.

01:58PM 6 Q. AND SO DO YOU UNDERSTAND THAT THE AMOUNT OF THE LOAN WAS

01:58PM 7 ORIGINALLY \$10 MILLION?

01:58PM 8 A. YES.

01:58PM 9 Q. AND MR. BALWANI GUARANTEED THAT?

01:58PM 10 A. YES.

01:58PM 11 Q. AND DO YOU UNDERSTAND THAT IN ORDER FOR THERANOS TO GET

01:58PM 12 THAT LOAN, MR. BALWANI HAD TO ACTUALLY PUT \$10 MILLION ASIDE TO

01:58PM 13 SECURE THE LOAN?

01:58PM 14 DO YOU UNDERSTAND THAT?

01:58PM 15 A. YES.

01:58PM 16 Q. AND THAT WHILE THE LOAN WAS OUTSTANDING AND NOT PAID BACK

01:58PM 17 BY THERANOS, MR. BALWANI COULDN'T TOUCH THAT 10 MILLION?

01:58PM 18 A. YES.

01:58PM 19 Q. AND SO ECONOMICALLY SPEAKING, IT'S THE SAME THING AS IF

01:58PM 20 MR. BALWANI HAD TO LOAN MONEY TO THE COMPANY?

01:58PM 21 A. YES.

01:58PM 22 Q. BECAUSE IF THE COMPANY DIDN'T PAY THE MONEY BACK, FIDELITY

01:59PM 23 WOULD JUST TAKE THAT \$10 MILLION THAT MR. BALWANI PUT ASIDE?

01:59PM 24 A. I SUPPOSE SO.

01:59PM 25 Q. RIGHT. AND IF -- AND SO MR. BALWANI WAS ON THE HOOK

01:59PM 1 BASICALLY FOR THAT \$10 MILLION?

01:59PM 2 A. YES.

01:59PM 3 Q. AND I THINK MR. LEACH REVIEWED WITH YOU THAT AT THAT TIME
01:59PM 4 IN AROUND AUGUST OF 2013, OR ABOUT THAT TIME, THAT THERANOS HAD
01:59PM 5 SOME NEEDS FOR CASH; IS THAT RIGHT?

01:59PM 6 A. YES.

01:59PM 7 Q. AND AT THE TIME THAT WE'RE TALKING ABOUT, 2009, IT GOES
01:59PM 8 BACK QUITE A WHILE, BUT DO YOU REMEMBER THAT THERE WAS A MAJOR
01:59PM 9 FINANCIAL CRISIS THAT WAS AFFECTING THE ECONOMY IN THE
01:59PM 10 UNITED STATES AND MAYBE EVEN AROUND THE WORLD?

01:59PM 11 DO YOU REMEMBER THAT?

01:59PM 12 A. I DON'T.

01:59PM 13 Q. YOU REMEMBER THERE WAS A FINANCIAL CRISIS IN 2008 AND
01:59PM 14 2009?

01:59PM 15 A. YEAH, SOMETHING LIKE THAT.

01:59PM 16 Q. OKAY. YOU REMEMBER THERE WAS SOME BIG WALL STREET FIRMS
01:59PM 17 THAT WENT OUT OF BUSINESS?

01:59PM 18 A. YES.

01:59PM 19 Q. OKAY. AND SO MR. BALWANI GUARANTEED A LOAN IN THAT
02:00PM 20 TIMEFRAME IN 2009; CORRECT?

02:00PM 21 A. YES.

02:00PM 22 Q. AND THAT LOAN ALLOWED THERANOS TO CONTINUE TO MAKE
02:00PM 23 PAYROLL?

02:00PM 24 A. YES.

02:00PM 25 Q. CONTINUE TO PROVIDE ITS EMPLOYEES WITH HEALTH INSURANCE?

02:00PM 1 A. YES.

02:00PM 2 Q. AND INCLUDING YOURSELF?

02:00PM 3 A. YES.

02:00PM 4 Q. AND CONTINUE WITH THE BUSINESS OF THE COMPANY TO TRY TO

02:00PM 5 DEVELOP CUTTING EDGE BLOOD TESTING PRODUCTS; IS THAT RIGHT?

02:00PM 6 A. YES.

02:00PM 7 Q. OKAY. NOW, AT SOME POINT THE AMOUNT OF THE LOAN WAS

02:00PM 8 ACTUALLY INCREASED; IS THAT RIGHT?

02:00PM 9 A. I DON'T QUITE REMEMBER THE SPECIFICS OF THAT.

02:00PM 10 Q. OKAY. I UNDERSTAND.

02:00PM 11 IF YOU CAN TAKE A LOOK IN THE BINDER AT AN EXHIBIT THAT

02:00PM 12 SHOULD BE NEAR THE ONE WE WERE LOOKING AT, AND IT'S

02:01PM 13 EXHIBIT 20511.

02:01PM 14 DO YOU SEE THAT THIS IS AN EMAIL STRING DATED -- THE TOP

02:01PM 15 WAS DATED APRIL 19TH, 2010.

02:01PM 16 DO YOU SEE THAT?

02:01PM 17 A. YES.

02:01PM 18 Q. AND DO YOU SEE YOUR NAME AMONG THE PEOPLE WHO ARE COPIED

02:01PM 19 ON THE EMAIL?

02:01PM 20 A. YES.

02:01PM 21 Q. AND THIS WAS AN EMAIL BETWEEN A NUMBER OF PEOPLE ABOUT THE

02:01PM 22 SAME LOAN THAT WE'VE JUST BEEN TALKING ABOUT; IS THAT RIGHT?

02:01PM 23 A. YES.

02:01PM 24 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20511.

02:01PM 25 MR. LEACH: NO OBJECTION, YOUR HONOR.

02:01PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:01PM 2 (DEFENDANT'S EXHIBIT 20511 WAS RECEIVED IN EVIDENCE.)

02:01PM 3 BY MR. COOPERSMITH:

02:01PM 4 Q. AND IF YOU WOULD JUST ZOOM IN TO THE SECOND EMAIL, AND IT

02:01PM 5 SAYS SUNNY -- WELL, LET ME JUST STEP BACK FOR A MINUTE.

02:01PM 6 SETH BERMEL, DO YOU KNOW WHO THAT IS?

02:02PM 7 A. NO.

02:02PM 8 Q. SOMEONE ASSOCIATED WITH THE LOAN THAT WE'RE DISCUSSING?

02:02PM 9 A. YES.

02:02PM 10 Q. AND THEN MR. BERMEL WRITES, "SUNNY:

02:02PM 11 "PLEASE REPLY TO THIS EMAIL CONFIRMING THAT YOU ARE AWARE

02:02PM 12 THAT THERANOS INC. IS INCREASING THEIR LINE OF CREDIT FROM

02:02PM 13 \$10 MILLION TO \$12 MILLION. IN ADDITION, YOU ARE AWARE THAT

02:02PM 14 THE ASSETS THAT YOU ARE PLEDGING IN YOUR," AND IT'S A CERTAIN

02:02PM 15 NUMBERED ACCOUNT, "WILL NOW BE SUPPORTING A LOAN OF UP TO

02:02PM 16 \$12 MILLION."

02:02PM 17 DO YOU SEE THAT?

02:02PM 18 A. YES.

02:02PM 19 Q. AND THEN DO YOU SEE THAT THERE'S A RESPONSE FROM

02:02PM 20 MR. BALWANI ABOVE THAT?

02:02PM 21 A. YES.

02:02PM 22 Q. AND HE SAYS "YES. I AM FINE ON BOTH COUNTS."

02:02PM 23 RIGHT?

02:02PM 24 A. YES.

02:02PM 25 Q. AND SO MR. BALWANI IS CONFIRMING THAT HE KNOWS HE'S GOING

02:02PM 1 TO BE ON THE HOOK FOR \$12 MILLION AS OPPOSED TO \$10 MILLION;
02:02PM 2 RIGHT?

02:02PM 3 A. YES.

02:02PM 4 Q. AND BY THE WAY, WHEN MR. BALWANI JOINED THE COMPANY, I
02:02PM 5 THINK YOU SAID IT WAS AROUND AUGUST OF 2009; IS THAT RIGHT?

02:02PM 6 A. YEAH, AROUND.

02:02PM 7 Q. I JUST THOUGHT YOU SAID IT WAS AROUND THE SAME TIME AS THE
02:02PM 8 LOAN TRANSACTION FROM AUGUST 2009?

02:03PM 9 A. YEAH.

02:03PM 10 Q. OKAY. DO YOU REMEMBER THAT AFTER MR. BALWANI JOINED THE
02:03PM 11 COMPANY, HE WENT TO THAILAND?

02:03PM 12 A. YES.

02:03PM 13 Q. AND YOU KNOW THAT HE WENT THERE IN ORDER TO ASSIST THE
02:03PM 14 COMPANY IN DOING SOME CLINICAL TRIAL WORK IN A HOSPITAL IN
02:03PM 15 BANGKOK?

02:03PM 16 DO YOU KNOW THAT?

02:03PM 17 A. I DON'T REMEMBER WHAT EXACTLY THE NATURE OF THAT, OR WAS
02:03PM 18 IT WITH A HOSPITAL OR WHAT OTHER BUSINESS PARTNER.

02:03PM 19 Q. AND DO YOU KNOW THAT HE RETURNED FROM THAILAND IN THE
02:03PM 20 SPRING OF 2010?

02:03PM 21 A. I DON'T REMEMBER THE SPECIFIC TIMEFRAME.

02:03PM 22 Q. OKAY. LET'S TALK ABOUT -- CONTINUE TO TALK ABOUT
02:03PM 23 MR. BALWANI'S JOINING THE COMPANY.

02:03PM 24 SO IF YOU COULD TAKE A LOOK AT EXHIBIT 20508.

02:04PM 25 DO YOU SEE THAT THIS IS A DOCUMENT DATED AUGUST 28TH,

02:04PM 1 2009, AND IT'S FROM ELIZABETH HOLMES TO MR. BALWANI. IT'S ON
02:04PM 2 THERANOS LETTERHEAD. AND IT RELATES TO EXTENDING HIM AN OFFER
02:04PM 3 OF EMPLOYMENT.

02:04PM 4 DO YOU SEE THAT?

02:04PM 5 A. YES.

02:04PM 6 Q. AND DO YOU RECOGNIZE THAT AS THE OFFER LETTER EXTENDED TO
02:04PM 7 MR. BALWANI?

02:04PM 8 A. YES.

02:04PM 9 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20508.

02:04PM 10 MR. LEACH: NO OBJECTION, YOUR HONOR.

02:04PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:04PM 12 (DEFENDANT'S EXHIBIT 20508 WAS RECEIVED IN EVIDENCE.)

02:04PM 13 BY MR. COOPERSMITH:

02:04PM 14 Q. AND IF WE GO TO THE PARAGRAPH, "DEAR SUNNY:

02:04PM 15 "ON BEHALF OF THERANOS INC. (THE COMPANY) I AM PLEASED TO
02:05PM 16 EXTEND A CONDITIONAL OFFER OF EMPLOYMENT TO YOU AS VICE
02:05PM 17 CHAIRMAN, REPORTING TO ME. YOUR SEMI-MONTHLY SALARY WILL BE
02:05PM 18 \$4,125 APPROXIMATING AN ANNUAL SALARY OF \$99,000 PER YEAR."

02:05PM 19 DO YOU SEE THAT?

02:05PM 20 A. YES.

02:05PM 21 Q. AND YOU'RE FAMILIAR THAT MR. BALWANI'S SALARY WHEN HE
02:05PM 22 JOINED WAS SET AT ABOUT \$99,000 PER YEAR?

02:05PM 23 A. YES.

02:05PM 24 Q. AND ARE YOU ALSO AWARE THAT HIS ORIGINAL JOB AT THERANOS
02:05PM 25 WAS HAVING THE TITLE OF VICE CHAIRMAN?

02:05PM 1 A. YES.

02:05PM 2 Q. AND THAT'S A BOARD POSITION; IS THAT RIGHT?

02:05PM 3 A. HUH, I'M NOT SURE.

02:05PM 4 Q. WELL, DO YOU KNOW IF MR. BALWANI WAS ULTIMATELY ON THE

02:05PM 5 BOARD OF DIRECTORS?

02:05PM 6 A. I DON'T REMEMBER.

02:05PM 7 Q. YOU'RE NOT SURE?

02:05PM 8 A. NO.

02:05PM 9 Q. WELL, MAYBE WE'LL GET BACK TO THAT.

02:05PM 10 BUT IN ANY EVENT, WHEN HE STARTED, HIS TITLE WAS VICE

02:05PM 11 CHAIRMAN; CORRECT?

02:05PM 12 A. YES.

02:05PM 13 Q. IN TERMS OF HIS SALARY, COULD YOU TAKE A LOOK AT

02:06PM 14 EXHIBIT 3818. THAT SHOULD BE IN THE SAME BINDER.

02:06PM 15 A. STARTING WITH A 3?

02:06PM 16 Q. YES, 3818. DO YOU HAVE THAT?

02:07PM 17 A. YES.

02:07PM 18 Q. OKAY. THANK YOU.

02:07PM 19 AND DO YOU RECOGNIZE THAT AS AN EMPLOYMENT APPLICATION FOR

02:07PM 20 THERANOS INC.?

02:07PM 21 A. I DON'T USUALLY SEE THIS.

02:07PM 22 Q. OKAY. YOU'VE SEEN OTHER EMPLOYMENT APPLICATIONS AT

02:07PM 23 THERANOS?

02:07PM 24 A. NO.

02:07PM 25 Q. AND YOU -- DID YOU YOURSELF FILL OUT AN EMPLOYMENT

02:07PM 1 APPLICATION WHEN YOU FIRST JOINED?

02:07PM 2 A. I DON'T REMEMBER.

02:07PM 3 Q. SO YOU'RE NOT FAMILIAR WITH THIS TYPE OF FORM; IS THAT
02:07PM 4 RIGHT?

02:07PM 5 A. CORRECT.

02:07PM 6 Q. OKAY. ARE YOU FAMILIAR WITH, THOUGH, THAT WHEN
02:07PM 7 MR. BALWANI WAS SET TO JOIN THERANOS, HE ASKED FOR A SALARY OF
02:07PM 8 ONLY \$1 PER YEAR?

02:07PM 9 A. CAN YOU REPEAT THAT QUESTION?

02:07PM 10 Q. SURE.

02:07PM 11 YOU'RE AWARE THAT WHEN MR. BALWANI JOINED THERANOS, BEFORE
02:07PM 12 HE JOINED, HIS REQUEST THAT HE BE PAID ONLY \$1 PER YEAR SALARY?

02:08PM 13 MR. LEACH: OBJECTION. FOUNDATION.

02:08PM 14 THE COURT: SUSTAINED.

02:08PM 15 BY MR. COOPERSMITH:

02:08PM 16 Q. WELL, MY QUESTION IS, ARE YOU AWARE OF THAT, MS. SPIVEY?

02:08PM 17 A. NO.

02:08PM 18 Q. YOU NEVER HEARD THAT BEFORE?

02:08PM 19 A. NO.

02:08PM 20 Q. OKAY. YOU ONLY KNEW ABOUT THE \$99,000 THAT HE WAS
02:08PM 21 ACTUALLY PAID?

02:08PM 22 A. YES.

02:08PM 23 Q. AND DO YOU KNOW THAT THE BOARD -- ARE YOU AWARE THAT THE
02:08PM 24 BOARD INSISTED THAT MR. BALWANI GET \$99,000 INSTEAD OF \$1?

02:08PM 25 MR. LEACH: OBJECTION. FOUNDATION.

02:08PM 1 THE COURT: YOU'RE ASKING IF SHE HAS KNOWLEDGE OF
02:08PM 2 ANY BOARD ACTION?
02:08PM 3 MR. COOPERSMITH: YES, YOUR HONOR.
02:08PM 4 THE COURT: DO YOU UNDERSTAND THE QUESTION?
02:08PM 5 THE WITNESS: YES.
02:08PM 6 THE COURT: OKAY. YOU CAN ANSWER THE QUESTION.
02:08PM 7 THE WITNESS: I WAS NOT AWARE.
02:08PM 8 BY MR. COOPERSMITH:
02:08PM 9 Q. YOU'RE NOT FAMILIAR WITH HOW THE BOARD INTERACTED WITH
02:08PM 10 MR. BALWANI? IS THAT YOUR TESTIMONY?
02:08PM 11 A. YES.
02:08PM 12 Q. OKAY.
02:09PM 13 NOW, IF YOU COULD TAKE A LOOK AT EXHIBIT 20510.
02:09PM 14 DO YOU HAVE THAT IN FRONT OF YOU?
02:09PM 15 A. YES.
02:09PM 16 Q. OKAY. THANK YOU.
02:09PM 17 SO YOU KNEW THAT THERANOS HAD A BOARD OF DIRECTORS; RIGHT?
02:09PM 18 A. YES.
02:09PM 19 Q. AND YOU UNDERSTAND THAT WHEN YOU JOINED, THERE WERE
02:09PM 20 VARIOUS PEOPLE ON THAT BOARD IN ADDITION TO JUST MS. HOLMES;
02:09PM 21 RIGHT?
02:09PM 22 A. YES.
02:09PM 23 Q. AND, FOR EXAMPLE, A GENTLEMAN NAMED DONALD LUCAS WAS ON
02:09PM 24 THE BOARD?
02:09PM 25 A. YES.

02:09PM 1 Q. AND DO YOU KNOW WHO MR. LUCAS IS?

02:09PM 2 A. HE WAS THE CHAIRMAN OF THE BOARD.

02:09PM 3 Q. RIGHT. WHEN YOU JOINED?

02:09PM 4 A. YES.

02:09PM 5 Q. AND ALSO WHEN MR. BALWANI JOINED IN 2009?

02:10PM 6 A. I DON'T REMEMBER SPECIFICALLY.

02:10PM 7 Q. OKAY. AND YOU KNOW THAT MR. LUCAS, DON LUCAS, WAS A

02:10PM 8 WELL-KNOWN INVESTOR IN SILICON VALLEY?

02:10PM 9 A. YES.

02:10PM 10 Q. AND, IN FACT, ARE YOU AWARE THAT THE BUSINESS SCHOOL DOWN

02:10PM 11 THE STREET IS NAMED AFTER MR. LUCAS?

02:10PM 12 A. NO.

02:10PM 13 Q. AND DO YOU UNDERSTAND THAT CHANNING ROBERTSON WAS ALSO ON

02:10PM 14 THE BOARD?

02:10PM 15 A. YES.

02:10PM 16 Q. AND HE WAS A PROFESSOR AT STANFORD?

02:10PM 17 A. YES.

02:10PM 18 Q. AND DO YOU UNDERSTAND THERE WERE OTHER BOARD MEMBERS

02:10PM 19 INCLUDING ROBERT SHAPIRO AND PETER THOMAS?

02:10PM 20 A. YES.

02:10PM 21 Q. AND YOU KNOW THAT THE BOARD HAD MEETINGS FROM TIME TO

02:10PM 22 TIME? ARE YOU AWARE OF THAT?

02:10PM 23 A. YES.

02:10PM 24 Q. AND THAT SOMETIMES THE BOARD WOULD REVIEW FINANCIAL

02:10PM 25 INFORMATION?

02:10PM 1 A. YES.

02:10PM 2 Q. AND SOMETIMES THEY WOULD MAKE OTHER DECISIONS ABOUT THE

02:10PM 3 COMPANY?

02:10PM 4 A. YES.

02:10PM 5 Q. AND DO YOU UNDERSTAND WHEN THE BOARD MET THERE WOULD BE A

02:11PM 6 SET OF NOTES OR MINUTES KEPT ABOUT GENERALLY WHAT THE BOARD

02:11PM 7 DISCUSSED AT THEIR MEETINGS?

02:11PM 8 A. YES.

02:11PM 9 Q. AND IF YOU LOOK AT EXHIBIT 20510 IN FRONT OF YOU, THAT'S

02:11PM 10 ONE OF THOSE BOARD MEMBERS THAT I JUST MENTIONED?

02:11PM 11 A. YES.

02:11PM 12 MR. COOPERSMITH: YOUR HONOR, WE MOVE TO ADMIT

02:11PM 13 20510.

02:11PM 14 MR. LEACH: OBJECTION. HEARSAY.

02:11PM 15 THE COURT: I'LL SUSTAIN THE OBJECTION WITHOUT AN

02:11PM 16 ADDITIONAL FOUNDATION.

02:11PM 17 MR. COOPERSMITH: OKAY.

02:11PM 18 Q. MS. SPIVEY, IN CONNECTION WITH BOARD MINUTES, YOU

02:11PM 19 UNDERSTAND WHEN THE BOARD MET AND KEPT MINUTES, IT WOULD BE

02:11PM 20 NECESSARY TO BE ACCURATE SO THAT OTHER PEOPLE COULD BE INFORMED

02:11PM 21 ABOUT WHAT THE BOARD DISCUSSED?

02:11PM 22 A. YES.

02:11PM 23 Q. AND DO YOU UNDERSTAND THAT WHEN THE BOARD TOOK MINUTES,

02:11PM 24 THOSE WOULD BE KEPT ON FILE AT THE COMPANY?

02:11PM 25 A. YES.

02:11PM 1 Q. AND THEY WERE KEPT ON FILE SO THAT PEOPLE COULD REFER TO
02:11PM 2 THOSE MINUTES IF NECESSARY?

02:11PM 3 A. YES.

02:11PM 4 Q. AND IF THERE WAS A NEED TO REFER TO THEM, IT WOULD BE
02:11PM 5 IMPORTANT THAT THE INFORMATION IN THE BOARD MINUTES IS ACCURATE
02:12PM 6 SO THAT PEOPLE COULD GET THE CORRECT INFORMATION AND DO THEIR
02:12PM 7 JOBS ACCORDINGLY; IS THAT FAIR?

02:12PM 8 A. YES.

02:12PM 9 MR. COOPERSMITH: YOUR HONOR, AGAIN, I WOULD OFFER
02:12PM 10 EXHIBIT 20510.

02:12PM 11 THE COURT: MR. LEACH.

02:12PM 12 MR. LEACH: SAME OBJECTION, YOUR HONOR.

02:12PM 13 ALSO, ON PAGE 6, THEY APPEAR TO BE A DRAFT OR UNSIGNED.

02:12PM 14 BUT SAME OBJECTION, HEARSAY.

02:12PM 15 THE COURT: CAN YOU -- I THINK THERE NEEDS TO BE
02:12PM 16 SOME MORE FOUNDATION AS TO -- SHE IDENTIFIED WHAT THIS IS, BUT
02:12PM 17 WHAT IT PURPORTS TO BE.

02:12PM 18 BUT DOES SHE HAVE PERSONAL KNOWLEDGE OF THIS?

02:12PM 19 MR. COOPERSMITH: I CAN ASK HER, YOUR HONOR.

02:12PM 20 Q. MS. SPIVEY, IN THE COURSE OF YOUR WORK, DID YOU EVER HAVE
02:12PM 21 A CHANCE OR OPPORTUNITY TO REVIEW BOARD MINUTES FOR ANY
02:12PM 22 PURPOSE?

02:12PM 23 A. YES.

02:12PM 24 Q. AND YOU DID THAT IN ORDER TO DO YOUR JOB; RIGHT?

02:12PM 25 A. YES.

02:12PM 1 Q. FOR EXAMPLE, IF THE BOARD MADE SOME DECISION ABOUT
02:12PM 2 FINANCIAL MATTERS IN HELPING THERANOS, YOU MIGHT WANT TO KNOW
02:12PM 3 THAT TO DO YOUR WORK; IS THAT RIGHT?

02:13PM 4 A. YES.

02:13PM 5 Q. AND YOU REFERRED TO THE BOARD MINUTES FOR THAT PURPOSE?

02:13PM 6 A. YES.

02:13PM 7 Q. AND THE BOARD MINUTES THAT YOU REVIEWED, ARE THEY ALWAYS
02:13PM 8 IN THE SAME FORM AS WHAT YOU'RE SEEING IN EXHIBIT 20510?

02:13PM 9 A. YES.

02:13PM 10 Q. AND SO THIS ONE LOOKS LIKE EVERY OTHER SET OF BOARD
02:13PM 11 MINUTES THAT YOU HAVE SEEN AT THERANOS WHILE YOU WERE THERE
02:13PM 12 WORKING AND DOING YOUR JOB?

02:13PM 13 A. YES.

02:13PM 14 MR. COOPERSMITH: YOUR HONOR, I THINK, AGAIN, WE'VE
02:13PM 15 LAID THE FOUNDATION FOR 20510.

02:13PM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:13PM 17 (DEFENDANT'S EXHIBIT 20510 WAS RECEIVED IN EVIDENCE.)

02:13PM 18 BY MR. COOPERSMITH:

02:13PM 19 Q. IF WE JUST GO TO THE FIRST PAGE JUST TO ORIENT OURSELVES,
02:13PM 20 YOU SEE WE HAVE AT THE TOP, THERANOS INC. AND MINUTES OF A
02:13PM 21 MEETING OF THE BOARD OF DIRECTORS.

02:13PM 22 AND THEN I ALREADY MENTIONED THESE NAMES TO YOU, BUT IT
02:13PM 23 HAS THE PEOPLE WHO ARE PRESENT IN THE FIRST PARAGRAPH. DO YOU
02:13PM 24 SEE IT SAYS, PRESENT AT ALL OR PARTS OF THE MEETING IN PERSON
02:13PM 25 WERE DIRECTORS ELIZABETH HOLMES, DONALD LUCAS,

02:13PM 1 CHANNING ROBERTSON, ROBERT SHAPIRO, AND PETER THOMAS.

02:13PM 2 DO YOU SEE THAT?

02:13PM 3 A. YES.

02:13PM 4 Q. AND IF WE GO TO PAGE 4 OF THE DOCUMENT.

02:14PM 5 DO YOU SEE THERE'S A SECTION CALLED BOARD UPDATES? IT'S

02:14PM 6 THE FIRST HEADING.

02:14PM 7 DO YOU SEE THAT?

02:14PM 8 A. YES.

02:14PM 9 Q. OKAY. THANK YOU.

02:14PM 10 AND IT SAYS, "THE BOARD DISCUSSED ADDING A NEW DIRECTOR TO

02:14PM 11 THE BOARD AND REVIEWED SEVERAL CANDIDATES FOR CONSIDERATION.

02:14PM 12 AFTER DISCUSSION, THE BOARD UNANIMOUSLY AGREED TO ELECT

02:14PM 13 RAMESH "SUNNY" BALWANI AS VICE CHAIRMAN."

02:14PM 14 DO YOU SEE THAT?

02:14PM 15 A. YES.

02:14PM 16 Q. AND YOU WEREN'T PRESENT AT THIS BOARD MEETING?

02:14PM 17 A. I WAS NOT.

02:14PM 18 Q. BUT THE PURPOSE OF MINUTES IS SO THAT OTHER PEOPLE COULD

02:14PM 19 BE INFORMED ABOUT WHAT HAPPENED AT THE BOARD; RIGHT?

02:14PM 20 A. YES.

02:14PM 21 Q. AND IN THIS CASE THE MINUTES SAY THAT THE BOARD DISCUSSED

02:14PM 22 ADDING A NEW DIRECTOR; CORRECT?

02:14PM 23 A. YES.

02:14PM 24 Q. AND THE NEW DIRECTOR WAS MR. BALWANI?

02:14PM 25 A. YES.

02:14PM 1 Q. AND THAT HE WAS GIVEN THE TITLE OF VICE CHAIRMAN?

02:15PM 2 A. YES.

02:15PM 3 Q. AND IT SAYS THAT THEY REVIEWED SEVERAL OTHER CANDIDATES

02:15PM 4 FOR CONSIDERATION.

02:15PM 5 DO YOU SEE THAT?

02:15PM 6 A. YES.

02:15PM 7 Q. OKAY. NOW, IF YOU TAKE A LOOK AT ANOTHER EXHIBIT, WHICH

02:15PM 8 IS SIMILAR, 20512.

02:15PM 9 AND DO YOU SEE THAT 20512 IS ANOTHER SET OF BOARD MINUTES

02:15PM 10 IN THE CASE OF THERANOS?

02:15PM 11 A. YES.

02:15PM 12 Q. AND IT'S IN THE SAME FORM THAT WE'VE SEEN PREVIOUSLY? AND

02:15PM 13 I'M JUST REALLY TALKING RIGHT NOW, MS. SPIVEY, ABOUT PAGES 1

02:15PM 14 THROUGH 8 OF THE EXHIBIT.

02:15PM 15 A. YES.

02:15PM 16 Q. AND THIS SET OF BOARD MINUTES IS DATED AUGUST 10, 2010; IS

02:16PM 17 THAT CORRECT?

02:16PM 18 A. YES.

02:16PM 19 Q. SO IT'S ABOUT A YEAR AFTER MR. BALWANI JOINED; IS THAT

02:16PM 20 RIGHT?

02:16PM 21 A. CORRECT.

02:16PM 22 Q. A LITTLE LESS THAN A YEAR?

02:16PM 23 A. YES.

02:16PM 24 Q. AND YOU SEE ON THE FIRST PAGE THERE'S THE SAME MEMBERS OF

02:16PM 25 THE BOARD, EXCEPT IN THIS CASE MR. BALWANI IS NOW ALSO ON THE

02:16PM 1 BOARD; RIGHT?

02:16PM 2 A. YES.

02:16PM 3 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20512.

02:16PM 4 MR. LEACH: NO OBJECTION, YOUR HONOR.

02:16PM 5 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:16PM 6 (DEFENDANT'S EXHIBIT 20512 WAS RECEIVED IN EVIDENCE.)

02:16PM 7 BY MR. COOPERSMITH:

02:16PM 8 Q. LOOKING AT THE FIRST PAGE, AND IF YOU ZOOM IN ON THE
02:16PM 9 PEOPLE ON THE BOARD, THERE'S A WATERMARK THERE, BUT I THINK YOU
02:16PM 10 CAN SEE IT.

02:16PM 11 THOSE ARE THE PEOPLE THAT WE JUST DISCUSSED A FEW MINUTES
02:16PM 12 AGO.

02:16PM 13 DO YOU SEE THAT?

02:16PM 14 A. YES.

02:16PM 15 Q. OKAY. AND THERE ARE, BY MY COUNT -- ELEMENTARY MATH --
02:16PM 16 SIX PEOPLE ON THE BOARD; IS THAT RIGHT?

02:16PM 17 A. YES.

02:16PM 18 Q. AND ONE OF THE BOARD MEMBERS, CHANNING ROBERTSON, THE
02:17PM 19 STANFORD PROFESSOR, HE PARTICIPATED IN THE BOARD MEETING BY
02:17PM 20 TELEPHONE.

02:17PM 21 DO YOU SEE THAT?

02:17PM 22 A. YES.

02:17PM 23 Q. AND THE REST OF THEM WERE PHYSICALLY PRESENT ACCORDING TO
02:17PM 24 THE MINUTES; CORRECT?

02:17PM 25 A. YES.

02:17PM 1 Q. OKAY. IF YOU TURN TO PAGE 7 OF THE DOCUMENT.

02:17PM 2 DO YOU SEE ON THAT PAGE THERE'S A HEADING THAT IS LABELLED

02:17PM 3 ADDITIONAL COMPENSATION MATTERS; AMENDMENT OF BYLAWS.

02:17PM 4 DO YOU SEE THAT?

02:17PM 5 A. YES.

02:17PM 6 Q. AND THEN IT READS, "THE BOARD THEN APPROVED THE ADDITION

02:17PM 7 OF AN OPERATIONAL TITLE OF PRESIDENT AND COO FOR SUNNY BALWANI

02:17PM 8 AFTER DISCUSSING HIS PERFORMANCE AND CONTRIBUTIONS AND

02:17PM 9 OPERATIONAL ROLE."

02:17PM 10 DO YOU SEE THAT?

02:17PM 11 A. YES.

02:17PM 12 Q. AND THEN IT GOES ON TO SAY THAT THEY'RE ALSO GOING TO

02:17PM 13 GRANT A CERTAIN STOCK OPTION TO HIM.

02:17PM 14 DO YOU SEE THAT?

02:17PM 15 A. YES.

02:17PM 16 Q. AND WE'LL TALK ABOUT THE STOCK OPTION IN A MINUTE, BUT

02:18PM 17 JUST PAUSING ON THE BOARD TITLE.

02:18PM 18 SO ACCORDING TO THE MINUTES, THE SIX MEMBERS OF THE BOARD

02:18PM 19 VOTED TO MAKE MR. BALWANI THE PRESIDENT AND COO ABOUT A YEAR

02:18PM 20 AFTER HE JOINED THERANOS; IS THAT RIGHT?

02:18PM 21 A. YES.

02:18PM 22 Q. OKAY. LET'S GO TO THE STOCK OPTIONS POINT SINCE WE JUST

02:18PM 23 SAW THAT IN THE BOARD MINUTES.

02:18PM 24 MR. BALWANI HAD STOCK OPTIONS AS AN OFFICER OF THERANOS;

02:18PM 25 IS THAT RIGHT?

02:18PM 1 A. YES.

02:18PM 2 Q. AND JUST SO WE ARE CLEAR WHAT THAT IS, I MEAN, MAYBE

02:18PM 3 EVERYONE KNOWS, BUT THE STOCK OPTION, I THINK YOU SAID THIS

02:18PM 4 DURING DIRECT, IS THE RIGHT TO BUY STOCK AT A CERTAIN PRICE?

02:18PM 5 A. YES.

02:18PM 6 Q. SO, FOR EXAMPLE, IF I GOT A STOCK OPTION THAT SAID I WOULD

02:18PM 7 BUY THERANOS STOCK AT \$10 A SHARE, IN ORDER TO ACTUALLY

02:18PM 8 EXERCISE THE OPTION, I WOULD HAVE TO PAY THE COMPANY \$10 A

02:18PM 9 SHARE?

02:18PM 10 A. YES.

02:18PM 11 Q. RIGHT. AND THE OPTION IS SOMETHING THAT YOU HAVE A RIGHT

02:19PM 12 TO.

02:19PM 13 SO IF THE COMPANY OR THE STOCK OF THE COMPANY IS WORTH

02:19PM 14 MORE IN THE FUTURE, AND I EXERCISE THE OPTION, I CAN BUY

02:19PM 15 SOMETHING THAT IS WORTH, FOR EXAMPLE, \$50 FOR \$10?

02:19PM 16 A. CORRECT.

02:19PM 17 Q. RIGHT. SO, FOR EXAMPLE, IF I WAS FORTUNATE ENOUGH TO OWN

02:19PM 18 STOCK IN APPLE INC., AND THE STOCK IS TRADING, YOU KNOW, IN THE

02:19PM 19 MANY HUNDREDS OF DOLLARS AT THIS POINT, IF I HAD AN OPTION TO

02:19PM 20 BUY THAT STOCK AT \$10, THAT WOULD BE A PRETTY GOOD DEAL FOR ME

02:19PM 21 AT THIS POINT; RIGHT?

02:19PM 22 A. YES.

02:19PM 23 Q. BUT WHEN I EXERCISE THE OPTION, I WOULD HAVE TO PAY INCOME

02:19PM 24 TAX; RIGHT?

02:19PM 25 A. THAT DEPENDS ON THE TYPE OF OPTION.

02:19PM 1 Q. OKAY. OKAY. WELL, MAYBE WE'LL GET INTO THAT A LITTLE BIT

02:19PM 2 MORE.

02:19PM 3 BUT WITH REGARD TO STOCK OPTIONS, YOU COULD, IN MY

02:19PM 4 EXAMPLE, JUST HOLD THE OPTION AND NOT EXERCISE IT; RIGHT?

02:19PM 5 A. YES. BUT THERE WOULD BE AN EXPIRATION DATE OF THE OPTION.

02:20PM 6 Q. THANK YOU.

02:20PM 7 SO PUTTING ASIDE THE EXPIRATION DATE, AS LONG AS YOU'RE

02:20PM 8 WITHIN THE EXPIRATION DATE PERIOD, YOU COULD JUST HOLD THE

02:20PM 9 OPTION AND NEVER PAY THE COMPANY ANY MONEY UNTIL YOU FELT IT

02:20PM 10 WAS THE RIGHT TIME TO DO THAT; RIGHT?

02:20PM 11 A. CORRECT.

02:20PM 12 Q. AND THE EXPIRATION DATES ARE SOMETIMES MANY YEARS; RIGHT?

02:20PM 13 A. YES.

02:20PM 14 Q. SOMETIMES FIVE OR TEN YEARS; RIGHT?

02:20PM 15 A. YES.

02:20PM 16 Q. AND SO IF YOU HAVE THE RIGHT TO BUY STOCK, THE HOPE IS

02:20PM 17 THAT YOU HOLD THE STOCK -- OR YOU HOLD THE OPTION RATHER, THE

02:20PM 18 COMPANY GOES UP IN VALUE, AND THEN AT SOME POINT IN THE FUTURE

02:20PM 19 WHEN YOU THINK THE COMPANY IS SUCCESSFUL, YOU COULD BUY THE

02:20PM 20 STOCK FOR THE LOWER PRICE THAT THE OPTION SAYS THAT YOU COULD

02:20PM 21 BUY IT AT; IS THAT FAIR?

02:20PM 22 A. YES.

02:20PM 23 Q. AND -- BUT IN THE CASE OF MR. BALWANI, THOUGH, HE DIDN'T

02:20PM 24 DO THAT, DID HE?

02:20PM 25 A. WHAT DO YOU MEAN, HE DIDN'T DO THAT?

02:20PM 1 Q. WELL, HE DIDN'T HOLD THE OPTION. HE ACTUALLY PURCHASED
02:20PM 2 THE STOCK RELATIVELY EARLY IN HIS TIME AT THERANOS?

02:21PM 3 A. MY RECOLLECTION WAS THAT EARLY ON HE EXERCISED SOME OF THE
02:21PM 4 OPTIONS, AND THEN FOR -- LIKE LATER ON, I THINK THERE WERE SOME
02:21PM 5 OPTIONS THAT HE DID NOT EXERCISE.

02:21PM 6 Q. OKAY. WELL, LET'S TALK ABOUT THE ONES THAT HE DID
02:21PM 7 EXERCISE.

02:21PM 8 SO IF YOU GO TO EXHIBIT 20128.

02:21PM 9 DO YOU HAVE THAT IN FRONT OF YOU?

02:21PM 10 A. YES.

02:21PM 11 Q. DO YOU RECOGNIZE 20128 AS, ON THE FIRST PAGE, A NOTICE OF
02:22PM 12 EXERCISE FOR A COMMON STOCK PURCHASE WARRANT?

02:22PM 13 A. YES.

02:22PM 14 Q. AND IT'S FOR 200,000 SHARES?

02:22PM 15 A. YES.

02:22PM 16 Q. AND THIS IS -- THIS IS SOMETHING THAT MR. BALWANI HAD THE
02:22PM 17 RIGHT TO DO, THIS 200,000 SHARES?

02:22PM 18 A. YES.

02:22PM 19 Q. NOW, THIS DOCUMENT USES THE PHRASE "WARRANT," AND THAT'S A
02:22PM 20 DIFFERENT CONCEPT THAN AN OPTION; IS THAT RIGHT?

02:22PM 21 A. DIFFERENT CONCEPT? IT'S THE SAME CONCEPT.

02:22PM 22 Q. IT'S THE SAME CONCEPT. ALL RIGHT.

02:22PM 23 SO IS A WARRANT THE SAME AS AN OPTION WHERE IT GIVES YOU
02:22PM 24 THE RIGHT TO BUY STOCK AT A CERTAIN PRICE?

02:22PM 25 A. YES.

02:22PM 1 Q. OKAY. BUT IS A WARRANT SOMETHING THAT'S GRANTED TO
02:22PM 2 SOMEONE WHO IS NOT WORKING FOR THE COMPANY?
02:22PM 3 A. CORRECT.
02:22PM 4 Q. AND AN OPTION IS FOR SOMEONE WHO DOES WORK IN THE COMPANY?
02:22PM 5 A. RIGHT.
02:22PM 6 Q. OKAY. SO THIS PARTICULAR EXHIBIT WE'RE LOOKING AT REFERS
02:22PM 7 TO A WARRANT; RIGHT?
02:22PM 8 A. YES.
02:22PM 9 Q. AND WAS THAT BECAUSE IT WAS GIVEN TO MR. BALWANI BEFORE HE
02:23PM 10 ACTUALLY JOINED THE COMPANY?
02:23PM 11 A. IT WAS GIVEN TO HIM BECAUSE IT WASN'T RELATED TO
02:23PM 12 PERFORMING SERVICES.
02:23PM 13 Q. OKAY. BUT HE GOT THE WARRANT JUST AT THE TIME HE JOINED;
02:23PM 14 ISN'T THAT RIGHT?
02:23PM 15 A. YES.
02:23PM 16 Q. AND THIS DOCUMENT, IF YOU LOOK AT THE LAST PAGE, WHICH IS
02:23PM 17 PAGE 6, DO YOU SEE THERE'S A SUMMARY OF EXERCISE PROCEEDS FROM
02:23PM 18 MR. BALWANI?
02:23PM 19 A. YES.
02:23PM 20 Q. ALL ON APRIL 14TH OF 2010?
02:23PM 21 A. YES.
02:23PM 22 Q. AND DOES PAGE 6 -- WELL, LET'S JUST LOOK AT PAGE 6 FIRST.
02:24PM 23 DOES PAGE 6 OF EXHIBIT 20128 ACCURATELY -- DOES PAGE 6 OF
02:24PM 24 EXHIBIT 20128 ACCURATELY REFLECT THE TRANSACTIONS MR. BALWANI
02:24PM 25 ENGAGED IN ON APRIL 14TH, 2010, IN EXERCISING WARRANTS IN STOCK

02:24PM 1 OPTIONS?

02:24PM 2 A. I BELIEVE SO.

02:24PM 3 Q. AND THAT WAS FOR A TOTAL OF \$288,000?

02:24PM 4 A. YES.

02:24PM 5 Q. AND THAT'S MONEY THAT MR. BALWANI HAD TO PAY THE COMPANY?

02:24PM 6 A. YES.

02:24PM 7 Q. OKAY.

02:24PM 8 YOUR HONOR, I WOULD OFFER EXHIBIT 2 -- ACTUALLY, THE OFFER

02:24PM 9 IS JUST THE SIXTH PAGE, PAGE 6 OF 20128.

02:24PM 10 MR. LEACH: I DON'T OBJECT TO PAGE 6. I THINK THE

02:24PM 11 WHOLE DOCUMENT SHOULD COME IN, YOUR HONOR.

02:25PM 12 THE COURT: ANY OBJECTION?

02:25PM 13 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:25PM 14 THE COURT: THE ENTIRETY OF 20128 IS ADMITTED, AND

02:25PM 15 IT MAY BE PUBLISHED.

02:25PM 16 (DEFENDANT'S EXHIBIT 20128 WAS RECEIVED IN EVIDENCE.)

02:25PM 17 MR. COOPERSMITH: YOUR HONOR, CAN I APPROACH

02:25PM 18 MS. ROBINSON?

02:25PM 19 THE COURT: YES.

02:25PM 20 MR. COOPERSMITH: (HANDING.)

02:25PM 21 YOUR HONOR, WHAT I'D LIKE TO DO WITH THE DOCUMENT THAT I

02:25PM 22 JUST HANDED UP TO THE COURT, IT'S A DEMONSTRATIVE EXHIBIT, AND

02:25PM 23 I'LL ONLY PUT UP THE PARTS THAT ARE ADMITTED INTO EVIDENCE, BUT

02:25PM 24 SINCE WE ADMITTED EXHIBIT 20128, WE WOULD LIKE TO PUT UP JUST

02:25PM 25 THE FIRST SECTION REFLECTING THAT FIRST TRANSACTION THAT

02:25PM 1 MS. SPIVEY FIRST TESTIFIED ABOUT.

02:25PM 2 THE COURT: AS A DEMONSTRATIVE ONLY?

02:25PM 3 MR. COOPERSMITH: YES, YOUR HONOR.

02:25PM 4 THE COURT: ALL RIGHT. IT MAY BE DISPLAYED.

02:25PM 5 MR. COOPERSMITH: OKAY. MR. ALLEN, IF YOU COULD

02:26PM 6 DISPLAY JUST THAT FIRST SECTION.

02:26PM 7 Q. OKAY. SO LOOKING AT --

02:26PM 8 THE COURT: LADIES AND GENTLEMEN -- I'M SORRY,

02:26PM 9 MR. COOPERSMITH.

02:26PM 10 THIS IS BEING OFFERED AS A DEMONSTRATIVE, THAT IS, AS AN

02:26PM 11 EXHIBIT FOR YOU TO VIEW.

02:26PM 12 IT'S NOT BEING OFFERED, NOR IS IT RECEIVED INTO EVIDENCE,

02:26PM 13 BUT MERELY AS A VISUAL TOOL TO ASSIST THE TESTIMONY.

02:26PM 14 PLEASE PROCEED.

02:26PM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:26PM 16 Q. MS. SPIVEY, LOOKING AT THE DEMONSTRATIVE EXHIBIT, CAN YOU

02:26PM 17 SEE IT ON YOUR SCREEN?

02:26PM 18 A. YES.

02:26PM 19 Q. AND THAT'S JUST THE TRANSACTION THAT WE JUST TALKED ABOUT;

02:26PM 20 RIGHT?

02:26PM 21 A. YES.

02:26PM 22 Q. SO MR. BALWANI PAID THE COMPANY \$288,000 TO PURCHASE

02:26PM 23 THERANOS SHARES ON APRIL 14TH OF 2010; IS THAT RIGHT?

02:26PM 24 A. YES.

02:26PM 25 Q. AND IF YOU GO BACK TO 20128, HE PAID \$0.36 A SHARE?

02:26PM 1 A. YES.

02:26PM 2 Q. AND THAT'S BECAUSE THAT'S WHAT THE DOCUMENTS, THE WARRANT

02:26PM 3 AND THE OPTIONS SAID THAT HE HAD THE RIGHT TO DO?

02:26PM 4 A. CORRECT.

02:26PM 5 Q. BUT HE DIDN'T HAVE TO DO THAT; RIGHT? HE COULD HAVE JUST

02:26PM 6 HELD THE OPTION AND WAITED TO SEE WHAT HAPPENED?

02:26PM 7 A. YES.

02:26PM 8 Q. BUT HE DECIDED TO SPEND THE MONEY AND GIVE THE COMPANY

02:27PM 9 THAT MONEY AND HOLD THE STOCK RIGHT AT THAT POINT IN TIME?

02:27PM 10 A. YES.

02:27PM 11 Q. ON APRIL 14TH, 2010?

02:27PM 12 A. YES.

02:27PM 13 Q. OKAY. IF YOU COULD TAKE A LOOK AT THE NEXT EXHIBIT, WHICH

02:27PM 14 IS 20130.

02:27PM 15 MR. ALLEN, YOU CAN LEAVE UP THE PORTION OF THE

02:27PM 16 DEMONSTRATIVE THAT WE WERE JUST LOOKING AT. THANK YOU. JUST

02:27PM 17 THE PORTION WE WERE LOOKING AT. THANKS.

02:27PM 18 OKAY. MS. SPIVEY, IF YOU COULD TAKE A LOOK AT THIS

02:27PM 19 EXHIBIT, WHICH IS 20130, DO YOU SEE THAT THIS IS A THERANOS

02:27PM 20 INC. 2004 STOCK PLAN, STOCK OPTION AGREEMENT EARLY EXERCISE?

02:27PM 21 A. YES.

02:27PM 22 Q. AND DO YOU SEE THAT IT HAS -- IT RELATES TO MR. BALWANI'S

02:28PM 23 OTHER OPTIONS THAT MR. BALWANI HAD; IS THAT RIGHT?

02:28PM 24 A. YES.

02:28PM 25 Q. AND IF YOU LOOK AT THE VERY LAST PAGE, WHICH IS PAGE 20,

02:28PM 1 DO YOU SEE THERE'S AN ELECTION UNDER SECTION 83(B) OF THE
02:28PM 2 INTERNAL REVENUE CODE?

02:28PM 3 A. YES.

02:28PM 4 Q. AND YOU FILLED OUT THAT FORM; IS THAT RIGHT?

02:28PM 5 A. YES.

02:28PM 6 Q. AND THAT'S TO REPORT CERTAIN MATTERS TO THE INTERNAL
02:28PM 7 REVENUE CODE THAT WERE REQUIRED; IS THAT RIGHT?

02:28PM 8 A. YES.

02:28PM 9 Q. OKAY. WE'LL GET BACK TO THAT.

02:28PM 10 BUT LOOKING AT THIS DOCUMENT, DO YOU RECOGNIZE THIS AS
02:28PM 11 PAPERWORK IN CONNECTION WITH MR. BALWANI'S EXERCISE OF STOCK
02:28PM 12 OPTIONS ON AUGUST 24TH, 2011.

02:29PM 13 I'M SORRY. IF YOU LOOK AT PAGE 6 -- I MISSPOKE ON THE
02:29PM 14 DATE. IT'S ACTUALLY AUGUST 21ST, 2011.

02:29PM 15 DO YOU SEE THAT?

02:29PM 16 A. YES.

02:29PM 17 Q. AND DO YOU RECOGNIZE THIS AS PAPERWORK FOR MR. BALWANI TO
02:29PM 18 EXERCISE THESE OPTIONS ON THAT DATE?

02:29PM 19 A. YES.

02:29PM 20 MR. COOPERSMITH: YOUR HONOR, WE OFFER
02:29PM 21 EXHIBIT 20130.

02:29PM 22 MR. LEACH: NO OBJECTION, YOUR HONOR.

02:29PM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:29PM 24 (DEFENDANT'S EXHIBIT 20130 WAS RECEIVED IN EVIDENCE.)

02:29PM 25 BY MR. COOPERSMITH:

02:29PM 1 Q. IF YOU LOOK AT THE FIRST PAGE, MS. SPIVEY, YOU SEE --
02:29PM 2 IF WE COULD PUT UP EXHIBIT 20130, MR. ALLEN.
02:29PM 3 DO YOU SEE THAT THERE'S A DATE OF GRANT, AUGUST 10TH,
02:30PM 4 2010?

02:30PM 5 A. YES.

02:30PM 6 Q. AND THEN DO YOU SEE THAT THERE'S AN INVESTING COMMENCEMENT
02:30PM 7 DATE OF JANUARY 1ST, 2010?

02:30PM 8 A. YES.

02:30PM 9 Q. AND DOES THAT MEAN THAT STARTING ON JANUARY 1ST, 2010,
02:30PM 10 MR. BALWANI WAS ABLE TO GO AHEAD AND EXERCISE HIS OPTION IF HE
02:30PM 11 CHOSE TO DO SO?

02:30PM 12 A. YES.

02:30PM 13 Q. AND IF YOU LOOK AT THIS SAME PAGE, YOU SEE THAT THERE'S A
02:30PM 14 TERM EXPIRATION DATE.

02:30PM 15 A. YES.

02:30PM 16 Q. AND YOU SEE IT SAYS TEN YEARS/AUGUST 10TH, 2020?

02:30PM 17 A. YES.

02:30PM 18 Q. AND THAT MEANS THAT MR. BALWANI COULD HAVE WAITED ALL OF
02:30PM 19 THAT TIME TO EXERCISE THE OPTION; RIGHT?

02:30PM 20 A. YES.

02:30PM 21 Q. AND HE COULD HAVE DECIDED NEVER TO EXERCISE THE OPTION;
02:30PM 22 RIGHT?

02:30PM 23 A. YES.

02:30PM 24 Q. AND IF HE NEVER EXERCISED THE OPTION, HE WOULDN'T HAVE HAD
02:30PM 25 TO GIVE \$486,403.56 TO THERANOS; RIGHT?

02:30PM 1 A. CORRECT.

02:30PM 2 Q. BUT ON AUGUST 21ST OF 2011, HE DECIDED TO EXERCISE THE

02:31PM 3 OPTION AND GIVE THE COMPANY THAT MONEY; IS THAT RIGHT?

02:31PM 4 A. YES.

02:31PM 5 Q. AND HE ALSO WAS ABLE TO BUY THAT AT \$0.36 A SHARE AS THE

02:31PM 6 OPTION PROVIDED?

02:31PM 7 A. YES.

02:31PM 8 Q. AND THAT WAS 1,351,121 SHARES?

02:31PM 9 A. YES.

02:31PM 10 Q. AND IF YOU GO TO THE LAST PAGE THAT WE WERE REFERRING TO

02:31PM 11 JUST A MINUTE AGO, THIS IS THAT I.R.S. ELECTION FORM THAT I WAS

02:31PM 12 MENTIONING.

02:31PM 13 DO YOU SEE THAT?

02:31PM 14 A. YES.

02:31PM 15 Q. AND THE REASON WHY YOU SEND THIS FORM TO THE I.R.S. IS

02:31PM 16 BECAUSE YOU'RE GIVING THE I.R.S. INFORMATION THAT MR. BALWANI

02:31PM 17 MIGHT HAVE A TAX CONSEQUENCE FOR THIS OPTION EXERCISE?

02:31PM 18 A. YES.

02:31PM 19 Q. AND IF YOU LOOK AT THE FIRST PARAGRAPH UNDER THE HEADING,

02:32PM 20 IT SAYS, "THE UNDERSIGNED TAXPAYER HEREBY ELECTS, PURSUANT TO

02:32PM 21 SECTIONS 55 AND 83(B) OF THE INTERNAL REVENUE CODE OF 1986, AS

02:32PM 22 AMENDED, TO INCLUDE IN TAXPAYER'S GROSS INCOME OR ALTERNATIVE

02:32PM 23 MINIMUM TAXABLE INCOME, AS THE CASE MAY BE, FOR THE CURRENT

02:32PM 24 TAXABLE YEAR THE AMOUNT OF ANY COMPENSATION TAXABLE TO TAX

02:32PM 25 PAYER IN CONNECTION WITH TAXPAYER'S RECEIPT OF THE PROPERTY

02:32PM 1 DESCRIBED BELOW."

02:32PM 2 DO YOU SEE THAT?

02:32PM 3 A. YES.

02:32PM 4 Q. AND THE PROPERTY DESCRIBED BELOW AS DESCRIBED IN SECTION 5

02:32PM 5 IS A \$1.03 PER SHARE; IS THAT RIGHT?

02:32PM 6 A. YES.

02:32PM 7 Q. AND MR. BALWANI'S WAS \$0.36 PER SHARE?

02:32PM 8 A. YES.

02:32PM 9 Q. BUT MR. BALWANI DIDN'T ACTUALLY GET THAT; RIGHT?

02:32PM 10 A. CORRECT.

02:32PM 11 Q. HE JUST HELD A STOCK CERTIFICATE THAT SOMEBODY DECIDED WAS

02:32PM 12 WORTH A \$1.03 A SHARE AT THAT POINT; RIGHT?

02:33PM 13 A. YES.

02:33PM 14 Q. AND IN ALL OF THE TIME THAT YOU WERE WORKING WITH

02:33PM 15 MR. BALWANI, YOU'RE NOT AWARE THAT HE SOLD A SINGLE SHARE OF

02:33PM 16 STOCK, ARE YOU?

02:33PM 17 A. CORRECT.

02:33PM 18 Q. SO HE NEVER ACTUALLY SOLD STOCK AND GOT ANY CASH FOR THAT?

02:33PM 19 A. YES.

02:33PM 20 Q. BUT NONETHELESS, WHEN HE EXERCISED HIS OPTION ON PAPER, HE

02:33PM 21 GOT STOCK WORTH 1.03 THAT HE PAID \$0.36 FOR?

02:33PM 22 A. YES.

02:33PM 23 Q. BUT IT'S ALL JUST PAPER?

02:33PM 24 A. YES.

02:33PM 25 Q. AND THAT MEANS THAT, BY MY CALCULATIONS, HE'S GOT -- AND

02:33PM 1 YOUR CALCULATIONS ARE PROBABLY BETTER, MS. SPIVEY -- BUT HE'S

02:33PM 2 GOT \$0.67 A SHARE OF PAPER GAIN; IS THAT RIGHT?

02:33PM 3 A. YES.

02:33PM 4 Q. AND IF YOU MULTIPLY \$0.67 A SHARE -- IT'S NOT A MATH TEST,

02:33PM 5 I PROMISE -- BUT IF YOU MULTIPLY \$0.67 A SHARE BY THE 1,351,121

02:33PM 6 SHARES, YOU GET -- I'M SORRY -- \$905,251.

02:34PM 7 DOES THAT SOUND RIGHT TO YOU?

02:34PM 8 A. YES.

02:34PM 9 Q. SO AROUND \$900,000 OF TAXABLE GAIN THAT MR. BALWANI HAD

02:34PM 10 BECAUSE OF THIS TRANSACTION?

02:34PM 11 A. YES.

02:34PM 12 Q. AND YOU UNDERSTAND MR. BALWANI HAD TO CUT A CHECK TO THE

02:34PM 13 I.R.S.?

02:34PM 14 MR. LEACH: OBJECTION. FOUNDATION.

02:34PM 15 THE COURT: SUSTAINED.

02:34PM 16 BY MR. COOPERSMITH:

02:34PM 17 Q. DO YOU KNOW THAT?

02:34PM 18 MR. LEACH: YOUR HONOR, THAT'S THE SAME QUESTION.

02:34PM 19 MR. COOPERSMITH: I'M ASKING IF SHE KNOWS.

02:34PM 20 THE COURT: IF SHE KNOWS THAT HE WROTE A CHECK TO

02:34PM 21 THE I.R.S.?

02:34PM 22 MR. COOPERSMITH: RIGHT.

02:34PM 23 THE COURT: DO YOU HAVE ANY KNOWLEDGE OF MR. BALWANI

02:34PM 24 WRITING A CHECK TO THE I.R.S.?

02:34PM 25 THE WITNESS: NO.

02:34PM 1 BY MR. COOPERSMITH:

02:34PM 2 Q. DO YOU HAVE ANY KNOWLEDGE OF HIM WRITING A CHECK TO
02:34PM 3 THERANOS SO THAT THERANOS COULD PAY THE I.R.S. ON BEHALF OF
02:34PM 4 MR. BALWANI?

02:34PM 5 A. I DON'T REMEMBER ANYTHING LIKE THAT.

02:34PM 6 Q. OKAY. LET'S GO TO THE NEXT EXHIBIT, WHICH IS 20129.

02:35PM 7 DO YOU SEE 20129? THIS EXHIBIT IS PAPERWORK REGARDING YET
02:35PM 8 ANOTHER OPTION THAT MR. BALWANI WAS GIVEN IN CONNECTION WITH
02:35PM 9 HIS WORK AT THERANOS?

02:35PM 10 A. YES.

02:35PM 11 Q. AND DO YOU UNDERSTAND THAT THE BOARD GRANTS OPTIONS;
02:35PM 12 RIGHT?

02:35PM 13 A. EXCUSE ME?

02:35PM 14 Q. THE BOARD OF DIRECTORS GRANTS OPTIONS?

02:35PM 15 A. YES.

02:35PM 16 Q. SO MS. HOLMES PERSONALLY DOESN'T DECIDE TO GRANT OPTIONS,
02:35PM 17 IT HAS TO BE THE BOARD; RIGHT?

02:35PM 18 A. YES.

02:35PM 19 Q. OKAY. AND THIS OPTION IS, IF YOU LOOK AT PAGE 6, THE
02:35PM 20 EXERCISE WAS ALSO SAME DATE, AUGUST 21ST, 2011, JUST LIKE THE
02:35PM 21 LAST ONE THAT WE TALKED ABOUT?

02:35PM 22 A. YES.

02:35PM 23 Q. AND THIS OPTION IS FOR 3,242,242 SHARES?

02:36PM 24 A. YES.

02:36PM 25 Q. WITH A PURCHASE PRICE OF \$3,339 -- I'M SORRY. I'LL START

02:36PM 1 AGAIN.

02:36PM 2 \$3,339,509.26?

02:36PM 3 A. YES.

02:36PM 4 Q. AND YOUR -- YOU UNDERSTAND THAT MR. BALWANI ALSO PAID THAT

02:36PM 5 MONEY TO THERANOS?

02:36PM 6 A. YES.

02:36PM 7 Q. TO BUY THERANOS STOCK?

02:37PM 8 A. I DON'T REMEMBER, LOOKING AT THESE DOCUMENTS, I BELIEVE

02:37PM 9 SO.

02:37PM 10 Q. OKAY. BUT THESE ARE DOCUMENTS THAT YOU HELPED PREPARE

02:37PM 11 WHILE YOU WERE AT THERANOS?

02:37PM 12 A. I WOULD HAVE, YES.

02:37PM 13 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER

02:37PM 14 EXHIBIT 20129.

02:37PM 15 MR. LEACH: NO OBJECTION, YOUR HONOR.

02:37PM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:37PM 17 (DEFENDANT'S EXHIBIT 20129 WAS RECEIVED IN EVIDENCE.)

02:37PM 18 BY MR. COOPERSMITH:

02:37PM 19 Q. DO YOU SEE ON THE FIRST PAGE, THOSE ARE THE NUMBERS THAT I

02:37PM 20 WAS JUST READING, THE 3 MILLION, 3.3 MILLION.

02:37PM 21 DO YOU SEE THAT?

02:37PM 22 A. YES.

02:37PM 23 Q. AND THE SHARE AMOUNT.

02:37PM 24 AND THIS WAS ANOTHER OPTION THAT, IF YOU GO DOWN BELOW

02:37PM 25 THAT, THE EXPIRATION DATE WAS ALSO FOR TEN YEARS.

02:37PM 1 DO YOU SEE THAT?

02:37PM 2 A. YES.

02:37PM 3 Q. BUT MR. BALWANI CHOSE TO EXERCISE HIS OPTION IN 2011?

02:37PM 4 A. YES.

02:37PM 5 Q. OKAY. MR. ALLEN, IF YOU COULD PUT UP ON THE DEMONSTRATIVE
02:37PM 6 THE SECOND SECTION.

02:37PM 7 AND LOOKING AT THE DEMONSTRATIVE EXHIBIT ON YOUR SCREEN,
02:38PM 8 MS. SPIVEY, DOES THAT ACCURATELY REFLECT THE TRANSACTION THAT
02:38PM 9 WE JUST DISCUSSED?

02:38PM 10 A. YES.

02:38PM 11 Q. SO THE TOTAL AMOUNT OF SHARES PURCHASED IN THIS
02:38PM 12 TRANSACTION WAS 4,593,363?

02:38PM 13 A. YES. I SUPPOSE. I DON'T KNOW.

02:38PM 14 Q. WELL, IF YOU ADD THOSE TWO NUMBERS TOGETHER?

02:38PM 15 A. RIGHT, YOU NEED TO ADD THOSE TWO TOGETHER.

02:38PM 16 Q. OKAY. AND THEN THE TOTAL AMOUNT IS JUST ADDING THE
02:38PM 17 486,000 TO THE 3,339,000.

02:38PM 18 DO YOU SEE THAT?

02:38PM 19 A. YES.

02:38PM 20 Q. AND THEN I KNOW THAT YOU'RE NOT DOING MATH ON THE FLY
02:38PM 21 HERE, BUT DO YOU HAVE ANY REASON TO DOUBT THAT THE MATH IS
02:38PM 22 \$3,825,912.82?

02:38PM 23 A. NO.

02:38PM 24 Q. OKAY. SO SO FAR, FROM THE EXHIBITS THAT WE HAVE SEEN,
02:39PM 25 THAT'S HOW MUCH MR. BALWANI PAID THERANOS?

02:39PM 1 A. YES.

02:39PM 2 Q. TO BUY ITS STOCK; RIGHT?

02:39PM 3 A. YES.

02:39PM 4 Q. OKAY. LET'S GO TO ONE MORE, AND THAT'S EXHIBIT 20135.

02:39PM 5 DO YOU SEE THAT EXHIBIT 20135 IS ALSO STOCK OPTION

02:39PM 6 PAPERWORK FOR A DIFFERENT STOCK OPTION EXERCISE, WHICH IS DATED

02:39PM 7 DECEMBER 16TH, 2011.

02:39PM 8 DO YOU SEE THAT?

02:39PM 9 A. YES.

02:39PM 10 Q. AND THIS TRANSACTION INVOLVED 550,000 SHARES?

02:39PM 11 A. YES.

02:39PM 12 Q. FOR A PRICE THAT MR. BALWANI HAD TO PAY OF 566,500?

02:39PM 13 A. YES.

02:39PM 14 Q. AND DO YOU RECOGNIZE THIS AS THE STOCK OPTION PAPERWORK

02:40PM 15 FOR THAT TRANSACTION?

02:40PM 16 A. YES.

02:40PM 17 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20135.

02:40PM 18 MR. LEACH: NO OBJECTION.

02:40PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:40PM 20 (DEFENDANT'S EXHIBIT 20135 WAS RECEIVED IN EVIDENCE.)

02:40PM 21 BY MR. COOPERSMITH:

02:40PM 22 Q. IF YOU COULD JUST GO, FIRST OF ALL, MS. SPIVEY, TO THE

02:40PM 23 LAST PAGE, WHICH IS PAGE 21.

02:40PM 24 IN THIS CASE WE ACTUALLY HAVE A COPY OF MR. BALWANI'S

02:40PM 25 CHECK.

02:40PM 1 DO YOU SEE THAT?

02:40PM 2 A. YES.

02:40PM 3 Q. AND THAT'S THE \$566,500?

02:40PM 4 A. YES.

02:40PM 5 Q. AND IT HAS ON THE NOTE, OPTIONS 550,000.

02:40PM 6 THAT'S THE NUMBER OF SHARES; RIGHT?

02:40PM 7 A. YES.

02:40PM 8 Q. AND THEN IF YOU GO TO THE VERY FIRST PAGE OF THE EXHIBIT,
02:40PM 9 YOU SEE IT HAS THE FIGURES I WAS JUST MENTIONING, AND ALSO THIS
02:40PM 10 OPTION EXPIRES IN FIVE YEARS RATHER THAN TEN YEARS.

02:40PM 11 DO YOU SEE THAT?

02:40PM 12 A. YES.

02:40PM 13 Q. AND THE PRICE WAS \$1.03 A SHARE?

02:40PM 14 A. YES.

02:40PM 15 Q. AND, MR. ALLEN, IF YOU COULD PUT UP THE LAST SECTION.

02:41PM 16 AND THEN IF YOU COULD PUT UP THE TOTALS AS WELL.

02:41PM 17 MS. SPIVEY, NOW LOOKING AT THE CHART THAT WE'VE COMPLETED,
02:41PM 18 DOES THIS ACCURATELY REFLECT, FROM THE EXHIBITS WE LOOKED AT,
02:41PM 19 MR. BALWANI'S TRANSACTIONS WHERE HE PURCHASED 5,943,363 SHARES
02:41PM 20 OF THERANOS FOR A PRICE OF \$4,680,412.82?

02:41PM 21 A. YES.

02:41PM 22 Q. BEFORE WHEN YOU WERE TALKING TO MR. LEACH, HE SHOWED YOU
02:41PM 23 AN EXHIBIT WHERE MR. BALWANI HAD MORE LIKE 29 MILLION SHARES.

02:41PM 24 DO YOU REMEMBER THAT?

02:41PM 25 A. SOMETHING LIKE THAT.

02:41PM 1 Q. RIGHT. DO YOU REMEMBER AT SOME POINT THERANOS HAD

02:41PM 2 SOMETHING CALLED A STOCK SPLIT?

02:41PM 3 A. YES.

02:41PM 4 Q. AND THAT MEANT THAT ANYONE WHO HAD SHARES GOT FIVE TIMES

02:42PM 5 AS MANY SHARES?

02:42PM 6 A. YES.

02:42PM 7 Q. AND THAT WAS A CORPORATE ACTION THAT THE COMPANY TOOK?

02:42PM 8 A. YES.

02:42PM 9 Q. AND THAT WOULD APPLY TO ANYONE WHO HELD COMMON SHARES IN

02:42PM 10 THERANOS; RIGHT?

02:42PM 11 A. CAN YOU REPEAT THAT?

02:42PM 12 Q. ANYONE WHO HELD COMMON STOCK IN THERANOS WOULD HAVE GOTTEN

02:42PM 13 THE SAME FIVE-TO-ONE SPLIT?

02:42PM 14 A. CORRECT.

02:42PM 15 Q. AND DID YOU HOLD SHARES IN THERANOS?

02:42PM 16 A. YES.

02:42PM 17 Q. AND SO YOU ALSO GOT FIVE TIMES AS MANY SHARES?

02:42PM 18 A. YES.

02:42PM 19 Q. SO IT WOULD APPLY TO MR. BALWANI JUST LIKE ANY OTHER

02:42PM 20 EMPLOYEE OR ANYONE ELSE WHO OWNED COMMON SHARES OF THERANOS; IS

02:42PM 21 THAT RIGHT?

02:42PM 22 A. YES.

02:42PM 23 Q. OKAY. LET'S SWITCH TOPICS AND TALK ABOUT THERANOS'S

02:43PM 24 REVENUE.

02:43PM 25 SO MR. LEACH ASKED YOU SOME QUESTIONS ON DIRECT ABOUT THE

02:43PM 1 CONCEPT OF REVENUE RECOGNITION.

02:43PM 2 DO YOU REMEMBER THAT?

02:43PM 3 A. YES.

02:43PM 4 Q. AND THAT'S AN ACCOUNTING CONCEPT; RIGHT?

02:43PM 5 A. YES.

02:43PM 6 Q. AND THERE ARE A LOT OF ACCOUNTING RULES THAT APPLY TO THE
02:43PM 7 QUESTION OF WHEN A COMPANY CAN RECOGNIZE REVENUE AND WHEN IT
02:43PM 8 CAN'T?

02:43PM 9 A. YES.

02:43PM 10 Q. AND SOMETIMES CASH COMES IN THE DOOR, AND FOR ONE REASON
02:43PM 11 OR ANOTHER, UNDER THE ACCOUNTING RULES, IT HAS TO BE TREATED AS
02:43PM 12 DEFERRED REVENUE AS OPPOSED TO REVENUE; IS THAT FAIR?

02:43PM 13 A. YES.

02:43PM 14 Q. AND THERE ARE MANY REASONS WHY THAT COULD HAPPEN?

02:43PM 15 A. YES.

02:43PM 16 Q. AND PEOPLE WHO, LIKE YOU, WHO WENT TO ACCOUNTING SCHOOL
02:43PM 17 AND HAVE CPA'S, TOOK THE EXAM, THAT'S SOMETHING THAT IS IN YOUR
02:43PM 18 WHEELHOUSE, THAT YOU -- YOU DEAL WITH THAT ALL OF THE TIME,
02:43PM 19 REVENUE RECOGNITION?

02:43PM 20 A. YES.

02:43PM 21 Q. BUT THAT'S PART OF THE ACCOUNTING PROFESSION, RIGHT, TO
02:43PM 22 UNDERSTAND WHAT THOSE RULES ARE?

02:43PM 23 A. CORRECT.

02:43PM 24 Q. AND MR. BALWANI WAS NOT AN ACCOUNTANT?

02:43PM 25 A. NO, HE'S NOT.

02:44PM 1 Q. AND ON DIRECT EXAM YOU MENTIONED THAT THERE WERE TIMES
02:44PM 2 WHEN MR. BALWANI WAS ASKING YOU, OR EVEN RECOMMENDING TO YOU,
02:44PM 3 THAT REVENUE SHOULD BE RECOGNIZED?
02:44PM 4 A. YES.
02:44PM 5 Q. AND IT'S NOT UNUSUAL FOR AN EXECUTIVE AT A COMPANY TO WANT
02:44PM 6 TO RECOGNIZE REVENUE, IS IT?
02:44PM 7 A. IT'S NOT.
02:44PM 8 Q. THAT HAPPENS ALL OF THE TIME; RIGHT?
02:44PM 9 A. I DON'T KNOW.
02:44PM 10 Q. BUT IN YOUR EXPERIENCE, LIKE, EXECUTIVES OF THE COMPANIES
02:44PM 11 WOULD RATHER RECOGNIZE REVENUE; RIGHT?
02:44PM 12 A. YES.
02:44PM 13 Q. BUT SOMETIMES THERE ARE ACCOUNTING RULES THAT SAY THAT YOU
02:44PM 14 CAN'T DO THAT; RIGHT?
02:44PM 15 A. UH-HUH, YES.
02:44PM 16 Q. AND YOUR JOB IS TO MAKE SURE THAT THE ACCOUNTING RULES
02:44PM 17 WERE FOLLOWED?
02:44PM 18 A. YES.
02:44PM 19 Q. AND THAT WAS TRUE WHETHER YOU HAD AUDITORS OR NOT
02:44PM 20 AUDITORS; RIGHT?
02:44PM 21 A. CORRECT.
02:44PM 22 Q. AND IN THE CASE THAT MR. LEACH DESCRIBED TO YOU, HE ASKED
02:44PM 23 YOU ABOUT SOME REVENUE THAT MR. BALWANI SUGGESTED TO YOU OUGHT
02:44PM 24 TO BE RECOGNIZED.
02:44PM 25 DO YOU REMEMBER THAT?

02:44PM 1 A. YES.

02:44PM 2 Q. AND YOU WENT TO KPMG?

02:44PM 3 A. YES.

02:44PM 4 Q. AND SO YOU HAD ACCESS TO THE OUTSIDE AUDITORS?

02:45PM 5 A. YES.

02:45PM 6 Q. AND EVEN THOUGH THEY WEREN'T COMPLETING THEIR AUDITED

02:45PM 7 FINANCIAL STATEMENTS, YOU STILL WERE ABLE TO TALK TO THEM;

02:45PM 8 RIGHT?

02:45PM 9 A. YES.

02:45PM 10 Q. AND YOU WERE ABLE TO GIVE THEM ACCURATE INFORMATION?

02:45PM 11 A. YES.

02:45PM 12 Q. AND YOU ALWAYS DID GIVE THEM ACCURATE INFORMATION?

02:45PM 13 A. YES.

02:45PM 14 Q. AND IN THIS CASE THAT WE'RE TALKING ABOUT, THE AUDITORS

02:45PM 15 SAID, NO, IN THIS CASE THE ACCOUNTING RULES DON'T ALLOW

02:45PM 16 RECOGNITION OF REVENUE; RIGHT?

02:45PM 17 A. YES.

02:45PM 18 Q. AND YOU TOLD MR. BALWANI THAT?

02:45PM 19 A. MY RECOLLECTION OF THIS WAS THAT HE AND I DISCUSSED AND I

02:45PM 20 TOLD HIM THAT THE REVENUE COULD NOT BE RECOGNIZED BECAUSE OF

02:45PM 21 THE ACCOUNTING RULES AND I WOULD FOLLOW UP WITH KPMG ON WHETHER

02:45PM 22 WE SHOULD BE ABLE TO RECOGNIZE THAT.

02:45PM 23 AND AFTER I CONFIRMED WITH KPMG THAT THOSE SHOULD NOT BE

02:45PM 24 RECOGNIZED, I DON'T RECALL INSTANCES WHERE I WENT BACK TO HIM

02:45PM 25 AND TELL HIM THAT KPMG AGREED. WE JUST LEFT IT AT THAT.

02:45PM 1 Q. THANK YOU. OKAY.

02:45PM 2 SO BASICALLY AFTER YOU WENT TO KPMG AND YOU CONFERRED WITH

02:46PM 3 THEM ABOUT THE MATTER, THEY SAID NO, AND THEN THE REVENUE WAS

02:46PM 4 NOT RECOGNIZED; RIGHT?

02:46PM 5 A. CORRECT.

02:46PM 6 Q. BECAUSE OF THE ACCOUNTING RULES?

02:46PM 7 A. YES.

02:46PM 8 Q. AND YOU DIDN'T EVEN HAVE TO GO BACK TO MR. BALWANI?

02:46PM 9 A. YES.

02:46PM 10 Q. AND SO MR. BALWANI DIDN'T TRY TO INTERFERE IN ANY WAY WITH

02:46PM 11 THE JUDGMENT OF KPMG, DID HE?

02:46PM 12 A. HE DID NOT.

02:46PM 13 Q. HE DID NOT ORDER YOU TO RECOGNIZE THE REVENUE ANYWAY?

02:46PM 14 A. CORRECT.

02:46PM 15 Q. HE DIDN'T ORDER YOU TO VIOLATE THE ACCOUNTING RULES OR

02:46PM 16 ANYTHING LIKE THAT, DID HE?

02:46PM 17 A. CORRECT.

02:46PM 18 Q. OKAY. LET'S GO TO THE EXHIBIT THAT MR. LEACH SHOWED YOU,

02:46PM 19 WHICH WAS A VERY BIG SPREADSHEET THAT HAD A LOT OF -- IN FACT,

02:46PM 20 MAYBE ALMOST ALL, AT LEAST IN A CERTAIN TIME PERIOD -- OF THE

02:46PM 21 TRANSACTIONS AT THERANOS. IT'S EXHIBIT 5172.

02:46PM 22 DO YOU REMEMBER THAT?

02:46PM 23 AND YOU'RE NOT GOING TO FIND THAT VERY EASILY. I THINK

02:46PM 24 IT'S BETTER TO LOOK ON THE SCREEN.

02:46PM 25 YEAH, A LOT EASIER; RIGHT?

02:46PM 1 SO THE SCREEN HAS A SPREADSHEET WITH, YOU KNOW, THE
02:46PM 2 VARIOUS TRANSACTIONS AND YOU WERE TALKING ABOUT SOME OF THESE
02:47PM 3 WITH MR. LEACH.
02:47PM 4 A. YES.
02:47PM 5 Q. SO I WANT TO GO THROUGH THE TRANSACTIONS IN ROW 26, OKAY?
02:47PM 6 A. YES.
02:47PM 7 Q. AND THAT ROW ALL OF THE WAY THROUGH IS THE CUSTOMER
02:47PM 8 RECEIPTS; RIGHT?
02:47PM 9 A. YES.
02:47PM 10 Q. SO THESE WERE CUSTOMERS OF THERANOS THAT PAID CASH TO
02:47PM 11 THERANOS; RIGHT?
02:47PM 12 A. YES.
02:47PM 13 Q. AND SOMETIMES THE REVENUE THAT CAME IN FROM CUSTOMERS
02:47PM 14 COULD BE RECOGNIZED AS REVENUE; RIGHT?
02:47PM 15 A. YES.
02:47PM 16 Q. AND SOMETIMES IT COULDN'T?
02:47PM 17 A. RIGHT.
02:47PM 18 Q. BUT THAT DEPENDED ON THE ACCOUNTING RULES AND HOW THEY
02:47PM 19 FUNCTIONED?
02:47PM 20 A. YES.
02:47PM 21 Q. OKAY. WELL, LET'S JUST LOOK AT THE NUMBERS.
02:47PM 22 IF YOU GO TO THE FIRST COLUMN D, YOU SEE THAT THERE'S
02:47PM 23 \$6,462.
02:47PM 24 A. YES.
02:47PM 25 Q. AND THEN IF YOU GO TO THE NEXT ONE, WHICH IS H, THAT'S

02:47PM 1 \$50,000; RIGHT?

02:48PM 2 A. YES.

02:48PM 3 Q. AND THEN ON J THAT'S 201,137?

02:48PM 4 A. YES.

02:48PM 5 Q. AND THEN IN THE MARCH, EARLY APRIL TIME PERIOD, YOU GO TO

02:48PM 6 ROW N, 4,358?

02:48PM 7 A. YES.

02:48PM 8 Q. AND KEEP SCROLLING ACROSS, MR. ALLEN.

02:48PM 9 AND THEN WE'VE GOT \$474.

02:48PM 10 IN COLUMN W, \$1,256.

02:48PM 11 DO YOU SEE THAT?

02:48PM 12 A. YES.

02:48PM 13 Q. AND IF WE KEEP SCROLLING, 51,689 IN COLUMN AA.

02:48PM 14 DO YOU SEE THAT?

02:48PM 15 A. YES.

02:48PM 16 Q. \$5 MILLION IN COLUMN AC?

02:48PM 17 A. YES.

02:48PM 18 Q. AND THAT'S IN MID-2011.

02:48PM 19 DO YOU SEE THAT?

02:48PM 20 A. YES.

02:48PM 21 Q. AND IF WE KEEP SCROLLING, \$30 MILLION IN AUGUST OF 2011 IN

02:48PM 22 COLUMN HH.

02:48PM 23 DO YOU SEE THAT?

02:48PM 24 A. YES.

02:49PM 25 Q. AND KEEP GOING.

02:49PM 1 \$5 MILLION IN COLUMN AO?

02:49PM 2 A. YES.

02:49PM 3 Q. AND THAT'S IN OCTOBER OF 2011?

02:49PM 4 A. YES.

02:49PM 5 Q. AND IF YOU KEEP GOING, \$15 MILLION IN CUSTOMER RECEIPTS IN

02:49PM 6 NOVEMBER OF 2011.

02:49PM 7 DO YOU SEE THAT?

02:49PM 8 A. YES.

02:49PM 9 Q. AND KEEP GOING. \$18,500,000 IN DECEMBER OF 2011.

02:49PM 10 DO YOU SEE THAT?

02:49PM 11 A. YES.

02:49PM 12 Q. AND THAT'S THE AMOUNT THAT YOU TALKED ABOUT WITH MR. LEACH

02:49PM 13 THAT ENDED UP BEING REFUNDED BY THERANOS?

02:49PM 14 A. YES.

02:49PM 15 Q. OKAY. KEEP GOING.

02:49PM 16 THAT'S 1,285 ON -- IN MARCH OF 2012, COLUMN BK.

02:49PM 17 DO YOU SEE THAT?

02:49PM 18 A. YES.

02:49PM 19 Q. THEN \$40 MILLION IN JUNE OF 2012?

02:49PM 20 A. YES.

02:49PM 21 Q. \$375 IN OCTOBER OF 2012.

02:50PM 22 DO YOU SEE THAT?

02:50PM 23 A. YES.

02:50PM 24 Q. 25 MILLION IN JANUARY OF 2013?

02:50PM 25 A. YES.

02:50PM 1 Q. AND THEN 4 MILLION ALSO IN JANUARY OF 2013?

02:50PM 2 A. YES.

02:50PM 3 Q. OKAY. \$555?

02:50PM 4 A. YES.

02:50PM 5 Q. AND THEN I THINK FINALLY, I THINK IT'S COLUMN FC.

02:50PM 6 DO YOU SEE THE \$75 MILLION IN JANUARY OF 2014?

02:50PM 7 A. YES.

02:50PM 8 Q. AND YOU UNDERSTAND THAT THAT PARTICULAR \$75 MILLION CAME

02:50PM 9 FROM WALGREENS; RIGHT?

02:50PM 10 A. YES.

02:50PM 11 Q. AND THAT WAS SOMETHING CALLED AN INNOVATION FEE.

02:50PM 12 DO YOU KNOW THAT?

02:50PM 13 A. YES.

02:50PM 14 Q. AND WERE YOU INVOLVED IN THE NEGOTIATIONS WITH WALGREENS

02:50PM 15 ABOUT WHAT LED WALGREENS TO GIVE THERANOS \$75 MILLION, AND DO

02:51PM 16 YOU HAVE AN UNDERSTANDING OF THE CONTRACTS BETWEEN WALGREENS

02:51PM 17 AND THERANOS?

02:51PM 18 A. I HAD THE CONTRACTS, BUT THAT'S ABOUT IT.

02:51PM 19 Q. OKAY. AND WERE YOU INVOLVED IN THE RELATIONSHIP BETWEEN

02:51PM 20 THERANOS AND WALGREENS AS IT EVOLVED OVER THE YEARS?

02:51PM 21 A. NO.

02:51PM 22 Q. OKAY.

02:51PM 23 YOUR HONOR, CAN I APPROACH?

02:51PM 24 THE COURT: OKAY.

02:51PM 25 MR. COOPERSMITH: (HANDING.)

02:51PM 1 Q. MS. SPIVEY, I'VE SHOWN YOU ANOTHER DEMONSTRATIVE EXHIBIT
02:51PM 2 THAT HAS BEEN MARKED AS 20520.

02:51PM 3 DO YOU HAVE THAT IN FRONT OF YOU?

02:51PM 4 A. YES.

02:51PM 5 Q. AND DO YOU SEE THAT IT REFLECTS ALL OF THE TRANSACTIONS
02:52PM 6 THAT WE JUST WENT OVER IN EXHIBIT 5172?

02:52PM 7 A. YES.

02:52PM 8 MR. COOPERSMITH: YOUR HONOR, I WOULD ASK TO DISPLAY
02:52PM 9 THIS DEMONSTRATIVE EXHIBIT AT THIS TIME.

02:52PM 10 THE COURT: ANY OBJECTION?

02:52PM 11 MR. LEACH: NO, YOUR HONOR.

02:52PM 12 THE COURT: LADIES AND GENTLEMEN, LIKE THE OTHER
02:52PM 13 DEMONSTRATIVE, THIS IS NOT BEING ADMITTED INTO EVIDENCE, BUT IT
02:52PM 14 IS BEING DISPLAYED TO YOU SOLELY TO ASSIST THE WITNESS'S
02:52PM 15 TESTIMONY.

02:52PM 16 BY MR. COOPERSMITH:

02:52PM 17 Q. MS. SPIVEY, DO YOU SEE THE DEMONSTRATIVE ON YOUR SCREEN
02:52PM 18 NOW?

02:52PM 19 A. YES.

02:52PM 20 Q. AND DO YOU SEE THAT THAT'S JUST THE LIST OF CUSTOMER
02:52PM 21 RECEIPTS THAT WE JUST WENT OVER?

02:52PM 22 A. YES.

02:52PM 23 Q. SO FROM JANUARY OF 2011 UNTIL JANUARY 2014, FOR THOSE
02:52PM 24 APPROXIMATELY THREE YEARS, THE TOTAL AMOUNT OF CUSTOMER
02:52PM 25 RECEIPTS WAS \$217,817,591?

02:52PM 1

A. YES.

02:52PM 2

Q. OKAY. DURING THE EXAMINATION THAT MR. LEACH CONDUCTED,

02:53PM 3

THE DIRECT EXAMINATION EARLIER TODAY, HE TALKED ABOUT AN

02:53PM 4

OUTSIDE COMPANY CALLED ARANCA.

02:53PM 5

DO YOU REMEMBER THAT?

02:53PM 6

A. YES.

02:53PM 7

Q. AND THAT WAS A COMPANY THAT DID PARTICULAR VALUATION WORK

02:53PM 8

FOR THERANOS?

02:53PM 9

A. YES.

02:53PM 10

Q. AND I'D LIKE TO SHOW YOU AN EXHIBIT THAT IS ALREADY IN

02:53PM 11

EVIDENCE. IT'S 5206.

02:53PM 12

AND IF YOU GO -- THERE'S ATTACHMENTS TO THESE EXHIBITS,

02:53PM 13

AND ONE OF THE ATTACHMENTS IS A REPORT FROM ARANCA.

02:53PM 14

MR. ALLEN, IF YOU GO TO PAGE 17 OF THAT ATTACHMENT.

02:54PM 15

THAT'S PAGE 14, I BELIEVE.

02:54PM 16

THERE YOU GO, PAGE 17.

02:54PM 17

I THINK YOU WENT OVER THIS ON DIRECT EXAMINATION,

02:54PM 18

MS. SPIVEY. BUT CAN YOU TAKE A LOOK AT THE FIRST BULLET POINT

02:54PM 19

UNDER ENGAGEMENT OBJECTIVE AND SCOPE.

02:54PM 20

AND DO YOU SEE IT SAYS, "WE UNDERSTAND THIS REPORT AND ITS

02:54PM 21

CONCLUSIONS (VALUATION OR THE OPINION) WOULD BE USED BY THE

02:54PM 22

COMPANY'S BOARD OF DIRECTORS (AND AUTHORIZED BOARD COMMITTEES)

02:54PM 23

SOLELY IN CONNECTION WITH DETERMINING THE EXERCISE PRICE FOR

02:54PM 24

GRANTING OPTIONS TO ITS EMPLOYEES TO COMPLY WITH IRC 409A AND

02:54PM 25

AS AN INPUT FOR VALUATIONS PURSUANT TO SFAS 123(R) FOR

02:54PM 1 FINANCIAL REPORTING PURPOSES."

02:54PM 2 DO YOU SEE THAT?

02:54PM 3 A. YES.

02:54PM 4 Q. AND WHAT IS SFAS 123(R)?

02:54PM 5 A. THAT'S THE ACCOUNTING RULE FOR OPTIONS.

02:54PM 6 Q. IT'S A RULE OF ACCOUNTING THAT TALKS IN PARTICULAR ABOUT

02:55PM 7 HOW TO TREAT STOCK OPTIONS WHEN THEY'RE GRANTED FOR TAX

02:55PM 8 PURPOSES; IS THAT RIGHT?

02:55PM 9 A. CAN YOU REPEAT THAT?

02:55PM 10 Q. I THINK YOU'RE GOING TO DO A BETTER JOB THAN ME.

02:55PM 11 HOW WOULD YOU DESCRIBE SFAS 123?

02:55PM 12 A. AGAIN, THAT IS A RULE -- ACCOUNTING RULE FOR THE COMPANY,

02:55PM 13 OR THE COMPANY HAS TO FOLLOW THESE ACCOUNTING RULES TO

02:55PM 14 CALCULATE THE OPTION EXPENSES WHEN THEY GRANT AN OPTION TO

02:55PM 15 OPTIONEE.

02:55PM 16 Q. OKAY. AND THE IRC, OR THE INTERNAL REVENUE CODE 409A,

02:55PM 17 THAT SECTION, THAT'S THE SECTION OF THE INTERNAL REVENUE CODE

02:55PM 18 THAT DEALS WITH IN PARTICULAR THE TAX TREATMENT OF OPTIONS WHEN

02:55PM 19 THEY'RE GRANTED?

02:55PM 20 A. YES.

02:55PM 21 Q. AND IT HAS TO DO WITH THE PRICE OF THE OPTION AND THE

02:55PM 22 VALUE OF THE COMPANY, THAT SORT OF THING?

02:55PM 23 A. YES.

02:55PM 24 Q. AND YOU NEED ONE OF THESE ARANCA REPORTS IN ORDER TO

02:55PM 25 COMPLY WITH WHAT IS CALLED A SAFE HARBOR UNDER THAT INTERNAL

02:56PM 1 REVENUE CODE SECTION?

02:56PM 2 A. YES.

02:56PM 3 Q. OKAY. AND THAT'S THE PURPOSE OF THE ARANCA REPORT; RIGHT?

02:56PM 4 A. YES.

02:56PM 5 Q. DO YOU REMEMBER HOW MUCH THE COMPANY HAD TO PAY ARANCA FOR

02:56PM 6 ITS REPORTS?

02:56PM 7 A. MAYBE A FEW THOUSAND DOLLARS.

02:56PM 8 Q. A FEW THOUSAND DOLLARS?

02:56PM 9 A. YES.

02:56PM 10 Q. PER REPORT, OR FOR THE WHOLE SUITE OF REPORTS, OR WHICH

02:56PM 11 ONE?

02:56PM 12 A. WHAT DO YOU MEAN?

02:56PM 13 Q. LIKE, HOW MUCH DID IT COST FOR THE REPORT FROM ARANCA?

02:56PM 14 A. A FEW THOUSAND DOLLARS FOR ONE REPORT.

02:56PM 15 Q. OKAY. I THINK YOU SAID THAT -- WELL, FOR ONE REPORT IT

02:56PM 16 WAS A FEW THOUSAND DOLLARS?

02:56PM 17 A. YEAH.

02:56PM 18 Q. OKAY. SO IT'S A FAIRLY LOW PRICE TO GET ONE OF THESE

02:56PM 19 REPORTS; RIGHT?

02:56PM 20 A. I DON'T KNOW HOW TO DEFINE THAT.

02:56PM 21 Q. I MEAN, THEY'RE NOT COMING TO THE COMPANY AND DOING SOME

02:56PM 22 KIND OF IN-DEPTH ANALYSIS AND, LIKE, SPENDING TIME AT THE

02:56PM 23 COMPANY AND TALKING TO PEOPLE? IT'S NOT THAT; RIGHT? YOU JUST

02:56PM 24 SEND THEM INFORMATION AND, FOR A FEW THOUSAND DOLLARS, THEY

02:57PM 25 GIVE YOU ONE OF THESE REPORTS; RIGHT?

02:57PM 1 A. YES.

02:57PM 2 Q. OKAY. MR. LEACH ALSO SHOWED YOU SOME DOCUMENTS, I THINK

02:57PM 3 THEY WERE CONDITIONALLY ADMITTED WITH A PARTICULAR -- THERE

02:57PM 4 WERE SOME OTHER NUMBERS, SOME OTHER PROJECTIONS.

02:57PM 5 DO YOU REMEMBER THAT?

02:57PM 6 A. YES.

02:57PM 7 Q. AND IF YOU COULD TAKE A LOOK AT THAT ONE, THAT'S -- I

02:57PM 8 THINK IT WAS EXHIBIT -- IF I CAN REMEMBER THIS -- I THINK IT'S

02:57PM 9 4859.

02:57PM 10 AND DO YOU REMEMBER THIS DOCUMENT WHEN YOU WERE TALKING

02:57PM 11 WITH MR. LEACH?

02:57PM 12 A. YES.

02:57PM 13 Q. AND YOU SAID YOU HAD NO INVOLVEMENT IN THIS; RIGHT?

02:57PM 14 A. CORRECT.

02:57PM 15 Q. AND DO YOU HAVE -- SO YOU HAVE NO KNOWLEDGE ABOUT HOW THIS

02:57PM 16 ACTUALLY WORKED, LIKE HOW THESE NUMBERS WERE DERIVED; IS THAT

02:58PM 17 RIGHT?

02:58PM 18 A. CORRECT.

02:58PM 19 Q. AND YOU HAVE NO KNOWLEDGE OF WHAT ASSUMPTIONS UNDERLIE

02:58PM 20 THESE NUMBERS?

02:58PM 21 A. CORRECT.

02:58PM 22 Q. AND, FOR EXAMPLE, IF YOU TAKE A LOOK AT ONE OF THE FIRST

02:58PM 23 LINES THERE, THERE'S ONE THAT SAYS LAB SERVICES FROM U.S.

02:58PM 24 RETAIL PHARMACIES?

02:58PM 25 A. YES.

02:58PM 1 Q. AND THAT WOULD BE, WHAT -- FOR EXAMPLE, WALGREENS WOULD BE
02:58PM 2 A U.S. RETAIL PHARMACY; RIGHT?

02:58PM 3 A. YES.

02:58PM 4 Q. SO DO YOU HAVE ANY KNOWLEDGE OF HOW THE NUMBER OF STORES
02:58PM 5 THAT THERANOS WAS GOING TO OPEN WOULD FACTOR INTO THAT
02:58PM 6 PROJECTED REVENUE NUMBER?

02:58PM 7 A. NO.

02:58PM 8 Q. DO YOU HAVE ANY UNDERSTANDING OF HOW THE COMPANY WENT
02:58PM 9 ABOUT THINKING ABOUT HOW MANY PATIENTS WOULD POSSIBLY VISIT
02:58PM 10 THESE STORES EVERY DAY?

02:58PM 11 A. NO.

02:58PM 12 Q. AND DO YOU HAVE ANY KNOWLEDGE AT ALL ABOUT WHAT INVESTORS
02:58PM 13 WERE TOLD ABOUT THIS DOCUMENT?

02:58PM 14 A. NO.

02:58PM 15 Q. IF THEY WERE TOLD ANYTHING AT ALL?

02:58PM 16 A. I DON'T HAVE -- I DON'T KNOW.

02:58PM 17 Q. AND DO YOU HAVE ANY KNOWLEDGE OF WHAT MEETINGS OCCURRED TO
02:58PM 18 WALK INVESTORS THROUGH THESE NUMBERS, OR NOT? DO YOU KNOW
02:59PM 19 ANYTHING ABOUT THAT?

02:59PM 20 A. NO.

02:59PM 21 Q. SO YOU JUST HAVE THIS PAGE, AND OTHER THAN THAT, YOU HAVE
02:59PM 22 NO KNOWLEDGE OF THIS AT ALL; RIGHT?

02:59PM 23 A. CORRECT.

02:59PM 24 Q. AND THEN YOU SEE ON THE TOP LEFT IT SAYS PROJECTED
02:59PM 25 STATEMENT OF INCOME?

02:59PM 1 A. YES.

02:59PM 2 Q. AND PROJECTED MEANS NOT ACTUAL; RIGHT?

02:59PM 3 A. YES.

02:59PM 4 Q. IT MEANS WHAT MIGHT HAPPEN IN THE FUTURE?

02:59PM 5 A. YES.

02:59PM 6 Q. AND WHAT MIGHT NOT HAPPEN IN THE FUTURE DEPENDS ON OTHER

02:59PM 7 THINGS, LIKE HOW MANY STORES ARE OPENED AND WHAT THE COMPANY

02:59PM 8 DOES AND THINGS LIKE THAT; RIGHT?

02:59PM 9 A. CORRECT.

02:59PM 10 Q. AND NO ONE COULD KNOW THAT FOR SURE; RIGHT?

02:59PM 11 A. YES.

02:59PM 12 Q. NOW, WE'VE LOOKED AT THE ARANCA DOCUMENT A MINUTE AGO AND

02:59PM 13 IT TALKED ABOUT HOW THE REPORT WAS BEING PREPARED FOR USE BY

02:59PM 14 THE BOARD OF DIRECTORS.

02:59PM 15 A. YES.

02:59PM 16 Q. RIGHT?

02:59PM 17 AND YOU UNDERSTAND THAT THE BOARD SPOKE ABOUT ARANCA

03:00PM 18 REPORTS DURING THE BOARD MEETINGS?

03:00PM 19 A. YES.

03:00PM 20 MR. LEACH: YOUR HONOR, OBJECTION. FOUNDATION.

03:00PM 21 THE COURT: SHE SAID YES, SO YOU CAN FOLLOW UP WITH

03:00PM 22 THAT.

03:00PM 23 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:00PM 24 Q. LET'S TAKE A LOOK AT ONE OF THOSE.

03:00PM 25 IF YOU COULD TURN IN YOUR BINDER TO EXHIBIT 20514.

03:00PM 1 DO YOU SEE 20514?

03:00PM 2 A. YES.

03:00PM 3 Q. AND DO YOU SEE THIS IS BOARD MINUTES SIMILAR TO THE ONES
03:00PM 4 WE LOOKED AT BEFORE?

03:00PM 5 A. YES.

03:00PM 6 Q. AND THESE ARE BOARD MINUTES FROM A MEETING JANUARY 20TH,
03:00PM 7 2015?

03:00PM 8 A. YES.

03:01PM 9 MR. COOPERSMITH: YOUR HONOR, I'D LIKE TO OFFER
03:01PM 10 EXHIBIT 20514.

03:01PM 11 MR. LEACH: NO OBJECTION, YOUR HONOR.

03:01PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:01PM 13 (DEFENDANT'S EXHIBIT 20514 WAS RECEIVED IN EVIDENCE.)

03:01PM 14 BY MR. COOPERSMITH:

03:01PM 15 Q. IF YOU GO TO THE FIRST PAGE, IT HAS, LIKE ALL OF THE BOARD
03:01PM 16 MINUTES DO, IT HAS A LIST OF THE PEOPLE WHO WERE PRESENT?

03:01PM 17 A. YES.

03:01PM 18 Q. OKAY. AND THE PEOPLE PRESENT ARE SUNNY BALWANI, AND THEN
03:01PM 19 RILEY BECHTEL?

03:01PM 20 A. YES.

03:01PM 21 Q. DO YOU KNOW WHO RILEY BECHTEL IS?

03:01PM 22 A. HE WAS ONE OF THE DIRECTORS.

03:01PM 23 Q. DO YOU KNOW WHAT HIS BACKGROUND IS OR ANYTHING LIKE THAT?

03:01PM 24 A. NO.

03:01PM 25 Q. DID YOU EVER HEAR OF THE BECHTEL CORPORATION?

03:01PM 1 A. NO.

03:01PM 2 Q. DO YOU KNOW WHO WILLIAM FOEGE IS?

03:01PM 3 A. I DON'T REMEMBER AT THIS TIME.

03:01PM 4 Q. DO YOU REMEMBER HE WAS SOMEONE WHO CAME FROM THE CENTERS

03:02PM 5 FOR DISEASE CONTROL?

03:02PM 6 A. YES.

03:02PM 7 Q. WILLIAM FRIST?

03:02PM 8 A. I DON'T REMEMBER.

03:02PM 9 Q. DO YOU UNDERSTAND MR. FRIST, DR. FRIST IS A FORMER UNITED

03:02PM 10 STATES SENATOR?

03:02PM 11 A. I DON'T REMEMBER AT THIS TIME.

03:02PM 12 Q. OKAY. DO YOU ALSO KNOW THAT HE'S A MEDICAL DOCTOR?

03:02PM 13 A. I DON'T REMEMBER.

03:02PM 14 Q. OKAY. AND THEN ELIZABETH HOLMES. WE'VE HEARD ABOUT HER.

03:02PM 15 AND THEN HENRY KISSINGER. ARE YOU FAMILIAR WITH

03:02PM 16 DR. KISSINGER?

03:02PM 17 A. YES.

03:02PM 18 Q. HE WAS SECRETARY OF STATE ALL OF THE WAY BACK IN THE NIXON

03:02PM 19 ADMINISTRATION; RIGHT?

03:02PM 20 A. YES.

03:02PM 21 Q. AND THEN RICHARD KOVACEVICH.

03:02PM 22 DO YOU SEE THAT?

03:02PM 23 A. YES.

03:02PM 24 Q. AND DO YOU KNOW WHAT HIS BACKGROUND IS?

03:02PM 25 A. I THINK HE WAS A FORMER CEO OF WELLS FARGO.

03:02PM 1 Q. WELLS FARGO, THE BANK?

03:02PM 2 A. RIGHT.

03:02PM 3 Q. AND THEN JAMES MATTIS, DO YOU SEE THAT?

03:02PM 4 A. YES.

03:02PM 5 Q. AND HE WAS THE FORMER GENERAL IN THE UNITED STATES ARMY

03:02PM 6 AND SERVED AS SECRETARY OF DEFENSE; IS THAT RIGHT?

03:02PM 7 A. YES.

03:02PM 8 Q. AND SAMUEL NUNN.

03:03PM 9 DO YOU SEE THAT?

03:03PM 10 A. YES.

03:03PM 11 Q. AND HE WAS A FORMER UNITED STATES SENATOR FROM GEORGIA?

03:03PM 12 A. YES.

03:03PM 13 Q. AND WILLIAM PERRY, HE WAS A FORMER SECRETARY OF DEFENSE AS

03:03PM 14 WELL?

03:03PM 15 A. MAYBE. I DON'T KNOW.

03:03PM 16 Q. YOU'RE NOT SURE.

03:03PM 17 GARY ROUGHHEAD, A FORMER ADMIRAL?

03:03PM 18 A. YES.

03:03PM 19 Q. AND GEORGE SHULTZ.

03:03PM 20 ARE YOU FAMILIAR WITH MR. SHULTZ?

03:03PM 21 A. YES.

03:03PM 22 Q. HE WAS THE SECRETARY OF STATE DURING THE REAGAN

03:03PM 23 ADMINISTRATION?

03:03PM 24 A. YES.

03:03PM 25 Q. AND THEN ALSO PRESENT AT THE BOARD MEETING WAS

03:03PM 1 DAVID BOIES.

03:03PM 2 DO YOU KNOW WHO THAT IS?

03:03PM 3 A. HE WAS THE PARTNER AT BOIES SCHILLER, THE LAW FIRM.

03:03PM 4 Q. RIGHT. SO THE FIRM IS ACTUALLY NAMED AFTER HIM.

03:03PM 5 DAVID BOIES IS THE BOIES IN BOIES SCHILLER; RIGHT?

03:03PM 6 A. YES.

03:03PM 7 Q. OKAY. SO LET'S GO TO PAGE 7 OF THE DOCUMENT.

03:04PM 8 DO YOU SEE THERE'S A SECTION CALLED DETERMINATION OF FAIR
03:04PM 9 MARKET VALUE?

03:04PM 10 A. YES.

03:04PM 11 Q. AND IT READS, "THE BOARD THEN REVIEWED THE FAIR MARKET

03:04PM 12 VALUE OF A SHARE OF THE COMPANY'S COMMON STOCK. THE BOARD

03:04PM 13 REVIEWED THE INDEPENDENT VALUATION REPORT BY ARANCA DATED

03:04PM 14 DECEMBER 15TH, 2014, AS WELL AS PRIOR REPORTS, ANALYZING THE

03:04PM 15 FAIR MARKET VALUE OF THE COMPANY'S COMMON STOCK PURSUANT TO

03:04PM 16 SECTION 409A OF THE INTERNAL REVENUE CODE, WHICH FAIR MARKET

03:04PM 17 VALUE WAS DETERMINED TO BE \$1.44 PER SHARE."

03:04PM 18 THEN IT GOES ON TO SAY, "THE INDEPENDENT VALUATION REPORT

03:04PM 19 WAS DISCUSSED BY THE BOARD, AND THE BOARD, HAVING CONSIDERED

03:04PM 20 ALL OF THE AVAILABLE INFORMATION MATERIAL TO THE VALUATION OF

03:04PM 21 THE COMPANY'S COMMON STOCK, INCLUDING THE INDEPENDENT VALUATION

03:04PM 22 REPORT, DETERMINED IN GOOD FAITH THAT THE FAIR MARKET VALUE OF

03:04PM 23 ONE SHARE OF THE COMPANY'S COMMON STOCK WAS \$1.44 AS OF THE

03:04PM 24 DATE OF THIS MEETING," AND THEN IT GOES ON.

03:04PM 25 DO YOU SEE THAT?

03:04PM 1 A. YES.

03:04PM 2 Q. AND SO DO YOU UNDERSTAND THAT THE BOARD WAS LOOKING AT THE

03:04PM 3 ARANCA REPORT AND DISCUSSING IT AND MAKING A DETERMINATION

03:05PM 4 WHETHER THEY WERE GOING TO ACCEPT THAT VALUATION THAT ARANCA

03:05PM 5 PROVIDES; IS THAT RIGHT?

03:05PM 6 A. YES.

03:05PM 7 Q. AND THAT'S FOR PURPOSES OF THIS INTERNAL REVENUE CODE?

03:05PM 8 A. YES.

03:05PM 9 Q. AND THE BOARD HAS THE REPORT IN FRONT OF THEM SO THEY CAN

03:05PM 10 DISCUSS IT AND REVIEW IT TO THEIR HEART'S CONTENT; IS THAT

03:05PM 11 RIGHT?

03:05PM 12 A. YES.

03:05PM 13 Q. OKAY. LET'S GO TO ANOTHER EXHIBIT JUST TO GET THESE DONE.

03:05PM 14 IT'S EXHIBIT 20516. THIS IS -- DO YOU HAVE THAT IN FRONT OF

03:05PM 15 YOU?

03:05PM 16 A. YES.

03:05PM 17 Q. THANK YOU. THIS IS ANOTHER SET OF BOARD MINUTES FOR A

03:05PM 18 MEETING DATED JANUARY 14TH, 2013?

03:05PM 19 A. YES.

03:05PM 20 Q. AND YOU CAN SEE THE BOARD MEMBERS ARE LISTED AS WHO IS

03:05PM 21 PRESENT.

03:05PM 22 DO YOU SEE THAT?

03:05PM 23 A. YES.

03:05PM 24 MR. COOPERSMITH: YOUR HONOR, WE OFFER

03:05PM 25 EXHIBIT 20516.

03:05PM 1 MR. LEACH: NO OBJECTION.

03:05PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:06PM 3 (DEFENDANT'S EXHIBIT 20516 WAS RECEIVED IN EVIDENCE.)

03:06PM 4 BY MR. COOPERSMITH:

03:06PM 5 Q. AND IF YOU GO TO PAGE 3, THERE'S A SECTION AT THE TOP, AND

03:06PM 6 IT ACTUALLY STARTS ON PAGE 1 UNDER THE SECTION CALLED

03:06PM 7 ADMINISTRATIVE OVERVIEW.

03:06PM 8 AND I WON'T READ IT. BUT DO YOU SEE THAT IT REFERENCES --

03:06PM 9 IF YOU GO TO THE TOP OF PAGE 2, IT ALSO DISCUSSES THE REFERENCE

03:06PM 10 TO THE ARANCA REPORT.

03:06PM 11 DO YOU SEE THAT?

03:06PM 12 A. YES.

03:06PM 13 Q. SO THE SAME TYPE OF DISCUSSION, BUT DIFFERENT MEETING,

03:06PM 14 DIFFERENT ARANCA REPORT; RIGHT?

03:06PM 15 A. YES.

03:06PM 16 Q. OKAY. AND THEN IF YOU COULD GO TO EXHIBIT 20517.

03:07PM 17 DO YOU SEE THIS IS ANOTHER BOARD MINUTES FROM APRIL 15TH,

03:07PM 18 2015?

03:07PM 19 A. YES.

03:07PM 20 Q. AND AGAIN IT RECITES WHO WAS PRESENT FROM THE BOARD OF

03:07PM 21 DIRECTORS?

03:07PM 22 A. YES.

03:07PM 23 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20517.

03:07PM 24 MR. LEACH: NO OBJECTION.

03:07PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:07PM 1 (DEFENDANT'S EXHIBIT 20517 WAS RECEIVED IN EVIDENCE.)

03:07PM 2 BY MR. COOPERSMITH:

03:07PM 3 Q. AND IF YOU GO TO PAGE 5 OF THE DOCUMENTS, DO YOU SEE

03:07PM 4 THERE'S A SECTION CALLED FAIR MARKET VALUE?

03:07PM 5 A. YES.

03:07PM 6 Q. AND IT REFERENCES THE INDEPENDENT VALUATION REPORT BY

03:07PM 7 ARANCA DATED APRIL 6TH, 2015.

03:07PM 8 DO YOU SEE THAT?

03:07PM 9 A. YES.

03:07PM 10 Q. AND IT GOES ON ON THE NEXT PAGE TO CONTINUE WITH THAT

03:07PM 11 SENTENCE.

03:07PM 12 DO YOU SEE THAT?

03:07PM 13 A. YES.

03:07PM 14 Q. OKAY. SO THIS WAS ANOTHER OCCASION WHEN THE BOARD

03:08PM 15 REVIEWED AND DISCUSSED A PARTICULAR ARANCA REPORT; RIGHT?

03:08PM 16 A. YES.

03:08PM 17 Q. FOR THIS STOCK OPTIONS VALUATION PURPOSE; RIGHT?

03:08PM 18 A. YES.

03:08PM 19 Q. NOW, THE COMPANY DIDN'T GRANT ANY STOCK OPTIONS IN 2014,

03:08PM 20 DID IT?

03:08PM 21 A. I DON'T REMEMBER.

03:08PM 22 Q. YOU DON'T REMEMBER.

03:08PM 23 HOW ABOUT 2015?

03:08PM 24 A. I DON'T REMEMBER.

03:08PM 25 Q. OKAY. BUT IF THE COMPANY DIDN'T GRANT ANY STOCK OPTIONS,

03:08PM 1 IF THAT WERE TRUE, THEN THESE ARANCA REPORTS WOULDN'T BE VERY
03:08PM 2 IMPORTANT BECAUSE THERE WOULD BE NO NEED TO EVALUATE ANYTHING;
03:08PM 3 RIGHT?

03:08PM 4 A. IF THERE WAS AN OPTION EXERCISED, I WOULD STILL NEED THAT
03:08PM 5 INFORMATION TO DETERMINE IF THE EMPLOYEE OWED ANY TAX IF THEY
03:08PM 6 EXERCISED AN OPTION.

03:08PM 7 Q. TO UNDERSTAND WHAT THE VALUE WAS AT THE TIME THAT THEY
03:09PM 8 EXERCISED?

03:09PM 9 A. YES.

03:09PM 10 Q. OKAY. UNDERSTOOD.

03:09PM 11 AND MR. BALWANI EXERCISED HIS OPTIONS LIKE ALL OF THE WAY
03:09PM 12 BACK IN 2010 AND 2011; RIGHT?

03:09PM 13 A. YES.

03:09PM 14 Q. OKAY. LET'S GO BACK TO THE SUBJECT OF WALGREENS FOR A
03:09PM 15 MOMENT.

03:10PM 16 SO ARE YOU AWARE THAT THE COMPANY ENTERED INTO A CONTRACT,
03:10PM 17 ITS FIRST CONTRACT WITH WALGREENS IN 2010?

03:10PM 18 A. SOMEWHERE AROUND THAT TIME.

03:10PM 19 Q. OKAY. LET'S TAKE A LOOK AT AN EXHIBIT. THAT MIGHT HELP.
03:10PM 20 IT'S EXHIBIT 372.

03:10PM 21 AND I THINK YOU SAID EARLIER WHEN I WAS ASKING YOU
03:10PM 22 QUESTIONS, MS. SPIVEY, THAT YOU HAD A REASON TO SEE THE
03:10PM 23 CONTRACTS THAT THERANOS HAD?

03:10PM 24 A. I, I --

03:10PM 25 Q. ARE YOU STILL LOOKING FOR THE EXHIBIT?

03:10PM 1 A. YOU SAID 378?

03:10PM 2 Q. I'M SORRY, 372. YES?

03:11PM 3 A. OH.

03:11PM 4 Q. DO YOU HAVE THAT NOW?

03:11PM 5 A. YES.

03:11PM 6 Q. AND I THINK YOU SAID EARLIER THAT AS PART OF YOUR JOB, YOU

03:11PM 7 HAD A REASON TO LOOK AT CONTRACTS THAT THERANOS HAD?

03:11PM 8 A. YES.

03:11PM 9 Q. AND YOU RECOGNIZE EXHIBIT 372 AS A THERANOS MASTER

03:11PM 10 PURCHASE AGREEMENT BETWEEN THERANOS AND WALGREENS DATED

03:11PM 11 JULY 30TH OF 2010?

03:11PM 12 A. YES.

03:11PM 13 Q. AND SO YOU RECOGNIZE THE DOCUMENT?

03:11PM 14 A. I THINK SO.

03:11PM 15 Q. OKAY.

03:11PM 16 YOUR HONOR, I JUST OFFER EXHIBIT 372.

03:11PM 17 MR. LEACH: NO OBJECTION, YOUR HONOR.

03:11PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:11PM 19 (GOVERNMENT'S EXHIBIT 372 WAS RECEIVED IN EVIDENCE.)

03:11PM 20 BY MR. COOPERSMITH:

03:11PM 21 Q. IF YOU -- LET'S LOOK AT THE FIRST PAGE. SO THAT'S THE

03:11PM 22 TITLE. AND YOU CAN SEE THE DATE AT THE TOP.

03:12PM 23 AND YOU SEE -- JUST KEEP THIS IN MIND, JULY 30TH, 2010, IS

03:12PM 24 DEFINED AS THE EFFECTIVE DATE OF THE AGREEMENT.

03:12PM 25 DO YOU SEE THAT?

03:12PM 1 A. YES.

03:12PM 2 Q. OKAY. AND YOU SEE IT'S SIGNED BY, ON THE BOTTOM, A

03:12PM 3 GENTLEMAN NAMED WADE MIQUELON?

03:12PM 4 A. YES.

03:12PM 5 Q. AND HE WAS THE CHIEF FINANCIAL -- HE SAYS HE'S THE

03:12PM 6 EXECUTIVE VICE PRESIDENT AT WALGREENS; RIGHT?

03:12PM 7 A. YES.

03:12PM 8 Q. OKAY. AND IF YOU GO TO THE NEXT PAGE, YOU SEE IT'S SIGNED

03:12PM 9 BY MS. HOLMES?

03:12PM 10 A. YES.

03:12PM 11 Q. OKAY. IF YOU CAN TAKE A LOOK AT PAGE 8 OF THE DOCUMENT.

03:12PM 12 OKAY. AND YOU SEE THERE'S A SECTION 6 CALLED CARTRIDGE

03:12PM 13 PRE-PURCHASE COMMITMENTS?

03:12PM 14 A. YES.

03:12PM 15 Q. AND THEN UNDER SECTION A, IT SAYS, "WALGREENS AGREES TO

03:13PM 16 INITIALLY PRE-PURCHASE \$50 MILLION OF CARTRIDGES (INVENTORY)

03:13PM 17 WHICH INCLUDES USE OF DEVICES AND PROVISION OF SERVICES

03:13PM 18 ACCORDING TO THE FOLLOWING SCHEDULE."

03:13PM 19 DO YOU SEE THAT?

03:13PM 20 A. YES.

03:13PM 21 Q. AND THEN THE SCHEDULE, THE FIRST PART OF IT IS,

03:13PM 22 "\$30 MILLION ON THE EFFECTIVE DATE OF THIS AGREEMENT."

03:13PM 23 DO YOU SEE THAT?

03:13PM 24 A. YES.

03:13PM 25 Q. AND THEN IT GOES ON TO SAY \$20 MILLION WITHIN FIVE DAYS OF

03:13PM 1 RECEIPT OF CERTAIN FDA APPROVAL AND CLIA WAIVER.

03:13PM 2 DO YOU SEE THAT?

03:13PM 3 A. YES.

03:13PM 4 Q. AND IF YOU GO TO THE NEXT PARAGRAPH, IT SAYS, "THE FIRST
03:13PM 5 30 MILLION PRE-PURCHASE PAYMENT WILL BE INVOICED AT THE
03:13PM 6 EFFECTIVE DATE OF THIS AGREEMENT."

03:13PM 7 DO YOU SEE THAT?

03:13PM 8 A. YES.

03:13PM 9 Q. OKAY. NOW, BASED ON THE CONTRACT, YOU UNDERSTAND THAT
03:13PM 10 THERANOS HAD A RIGHT TO \$30 MILLION FROM WALGREENS RIGHT ON
03:13PM 11 THAT DATE, JULY 30TH, 2010?

03:13PM 12 A. YES.

03:14PM 13 Q. AND DO YOU UNDERSTAND THAT THERANOS DIDN'T INVOICE
03:14PM 14 WALGREENS FOR THAT AMOUNT; RIGHT?

03:14PM 15 A. I DON'T REMEMBER. DID WE NOT?

03:14PM 16 Q. WELL, IF THERE WAS AN INVOICE TO WALGREENS, YOU WOULD HAVE
03:14PM 17 PREPARED IT?

03:14PM 18 A. RIGHT.

03:14PM 19 Q. BUT IT IS QUITE A LONG TIME AGO?

03:14PM 20 A. YEAH.

03:14PM 21 Q. SO DO YOU KNOW WHETHER THERANOS INVOICED WALGREENS FOR THE
03:14PM 22 \$30 MILLION OR NOT?

03:14PM 23 A. I DON'T REMEMBER.

03:14PM 24 Q. OKAY. SO IT'S POSSIBLE THAT THERANOS HAD A RIGHT TO
03:14PM 25 30 MILLION AND JUST DIDN'T TRY TO COLLECT IT FROM WALGREENS AT

03:14PM 1 THAT POINT; RIGHT?

03:14PM 2 MR. LEACH: OBJECTION. IT CALLS FOR SPECULATION.

03:14PM 3 THE COURT: SUSTAINED.

03:14PM 4 BY MR. COOPERSMITH:

03:14PM 5 Q. YOU DON'T KNOW ONE WAY OR THE OTHER?

03:14PM 6 A. I DON'T REMEMBER.

03:14PM 7 Q. OKAY. YOU UNDERSTAND THAT AT SOME POINT IN THE FALL OF

03:15PM 8 2013 THERANOS STARTED TESTING BLOOD SAMPLES AT WALGREENS

03:15PM 9 STORES, THAT WERE COLLECTED AT WALGREENS STORES?

03:15PM 10 A. YES.

03:15PM 11 Q. AND THAT BUSINESS CONTINUED INTO THE LATTER PART OF '13

03:15PM 12 AND INTO 2014 AND 2015?

03:15PM 13 A. YES.

03:15PM 14 Q. AND THE PATIENTS WOULD GO TO WALGREENS STORES AND GIVE A

03:15PM 15 BLOOD SAMPLE; RIGHT?

03:15PM 16 A. YES.

03:15PM 17 Q. AND THAT THAT SAMPLE WOULD BE SHIPPED TO THE THERANOS

03:15PM 18 LABORATORY FOR TESTING; IS THAT RIGHT?

03:15PM 19 A. YES.

03:15PM 20 Q. AND THE LABORATORY IT WOULD BE SHIPPED TO IS EITHER THE

03:15PM 21 LABORATORY IN CALIFORNIA, IN NEWARK, CALIFORNIA; RIGHT?

03:15PM 22 A. YES.

03:15PM 23 Q. OR THERE WAS ANOTHER LAB THAT THEY OPENED IN ARIZONA.

03:15PM 24 DO YOU REMEMBER THAT?

03:15PM 25 A. YES.

03:15PM 1 Q. AND THERANOS WOULD DO THE TEST AND THEN PROVIDE THE
03:15PM 2 RESULT?

03:15PM 3 A. YES.

03:15PM 4 Q. WHEN THE PATIENTS WENT INTO WALGREENS, I THINK WE SAW
03:15PM 5 BEFORE IN SOME OF THE DOCUMENTS THAT YOU WERE LOOKING AT WITH
03:15PM 6 MR. LEACH, SOMETIMES THEY HAD INSURANCE.

03:16PM 7 DO YOU REMEMBER THAT?

03:16PM 8 A. YES.

03:16PM 9 Q. AND IF THEY HAD INSURANCE, YOU MIGHT GET THERANOS --
03:16PM 10 THERANOS MIGHT GET SOME MONEY FROM THE INSURANCE COMPANY?

03:16PM 11 A. CORRECT.

03:16PM 12 Q. BUT IF THEY DIDN'T HAVE INSURANCE, THEY WOULD HAVE TO PAY
03:16PM 13 BY CASH OR CREDIT CARD.

03:16PM 14 THAT WAS THE ONLY OTHER WAY TO DO IT; RIGHT?

03:16PM 15 A. YES.

03:16PM 16 Q. AND THAT CASH OR CREDIT CARD WOULD BE COLLECTED BY
03:16PM 17 WALGREENS?

03:16PM 18 A. YES.

03:16PM 19 Q. AND WALGREENS WOULD HAVE A RIGHT TO A CERTAIN AMOUNT OF
03:16PM 20 THAT MONEY; RIGHT?

03:16PM 21 A. WITH THAT PART OF THE ARGUMENT, I WAS NOWHERE -- I DID NOT
03:16PM 22 KNOW.

03:16PM 23 Q. YOU WEREN'T AWARE OF HOW THE MONEY WAS SPLIT BETWEEN
03:16PM 24 WALGREENS AND THERANOS?

03:16PM 25 A. CORRECT.

03:16PM 1 Q. SO -- BUT WALGREENS, YOU KNOW THAT WALGREENS COLLECTED
03:16PM 2 THAT MONEY?
03:16PM 3 A. YES.
03:16PM 4 Q. AND ISN'T IT THE CASE THAT THERANOS NEVER ASKED WALGREENS
03:16PM 5 FOR THAT MONEY?
03:16PM 6 A. RIGHT.
03:16PM 7 Q. AND SO THE MONEY THAT PATIENTS -- ANY PATIENTS WHO PAID
03:16PM 8 MONEY AT WALGREENS WENT TO WALGREENS AND THERANOS NEVER GOT
03:17PM 9 THAT?
03:17PM 10 A. SO TO BACKTRACK A LITTLE BIT. I DON'T KNOW IF THERANOS
03:17PM 11 ASKED. I DID NOT.
03:17PM 12 Q. YOU DIDN'T ASK?
03:17PM 13 A. RIGHT.
03:17PM 14 Q. AND YOU'RE NOT AWARE OF THERANOS EVER GETTING THAT MONEY?
03:17PM 15 A. CORRECT.
03:17PM 16 Q. SO I MENTIONED NEWARK, CALIFORNIA A MINUTE AGO.
03:17PM 17 DID YOU EVER GO THERE?
03:17PM 18 A. YES.
03:17PM 19 Q. AND IT'S JUST ACROSS THE BAY FROM PALO ALTO; RIGHT?
03:17PM 20 A. YES.
03:17PM 21 Q. AND YOU SAW THAT -- WHAT DID YOU OBSERVE THERE WHEN YOU
03:17PM 22 WENT TO NEWARK? WHAT DID IT LOOK LIKE?
03:17PM 23 A. IT'S A BIG WAREHOUSE BUILDING TYPE.
03:17PM 24 Q. OKAY. AND INSIDE THEY WERE MANUFACTURING -- THERE WAS
03:17PM 25 MANUFACTURING EQUIPMENT?

03:17PM 1 A. YES.

03:17PM 2 Q. AND A LABORATORY?

03:17PM 3 A. I DON'T RECALL SEEING THE LABORATORY WHERE THAT IS. WHEN

03:18PM 4 I WENT THERE I USUALLY JUST GO TO THE MANUFACTURING FLOOR.

03:18PM 5 Q. TO THE OFFICE SPACE THERE?

03:18PM 6 A. RIGHT.

03:18PM 7 Q. OKAY. BUT YOU -- WHEN YOU WERE THERE, YOU SAW THAT THEY

03:18PM 8 HAD MANUFACTURING FACILITIES AS WELL?

03:18PM 9 A. YES.

03:18PM 10 Q. OKAY. I'D LIKE TO SHOW YOU SOME PHOTOS, AND THEY'RE IN

03:18PM 11 YOUR BINDER. LET'S START WITH THE FIRST ONE, 20206.

03:18PM 12 DO YOU RECOGNIZE EXHIBIT 20206?

03:18PM 13 A. YES.

03:18PM 14 Q. IS THAT A PORTION OF THE THERANOS MANUFACTURING FACILITY?

03:18PM 15 A. YES.

03:18PM 16 MR. COOPERSMITH: YOUR HONOR, I OFFER 20206.

03:18PM 17 MR. LEACH: NO OBJECTION.

03:19PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:19PM 19 (DEFENDANT'S EXHIBIT 20206 WAS RECEIVED IN EVIDENCE.)

03:19PM 20 BY MR. COOPERSMITH:

03:19PM 21 Q. YOU KNOW WHAT THOSE MACHINES ARE?

03:19PM 22 A. AT SOME POINT I KNEW, BUT NOW I DON'T.

03:19PM 23 Q. BUT WHEN THE MACHINES WERE PURCHASED, YOU WOULD HAVE HAD

03:19PM 24 TO HAVE BEEN INVOLVED IN WRITING THE CHECK OR SENDING THE WIRE,

03:19PM 25 OR MAKING SURE THAT PURCHASE COULD HAPPEN; RIGHT?

03:19PM 1 A. YES.

03:19PM 2 Q. OKAY. IF YOU WOULD LOOK AT 20207.

03:19PM 3 DO YOU RECOGNIZE 20207 AS PART OF THE THERANOS

03:19PM 4 MANUFACTURING FACILITY?

03:19PM 5 A. I DON'T KNOW IF I PERSONALLY HAVE SEEN IT.

03:19PM 6 Q. YOU'RE NOT -- YOU DIDN'T SEE THE ITEMS PICTURED IN 20207?

03:20PM 7 A. I DON'T REMEMBER.

03:20PM 8 Q. OKAY. LET'S GO TO 20208.

03:20PM 9 AND DO YOU SEE THAT 20208 HAS SOME OTHER MANUFACTURING

03:20PM 10 EQUIPMENT IN IT?

03:20PM 11 A. YES.

03:20PM 12 Q. AND IF YOU REMEMBER, IF YOU LOOK ON THE MACHINES, YOU SEE

03:20PM 13 THERE'S A REFERENCE TO A COMPANY CALLED ARBURG, LIKE

03:20PM 14 A-R-B-U-R-G?

03:20PM 15 A. YEAH, I SAW THAT.

03:20PM 16 Q. AND DO YOU REMEMBER ARRANGING FOR WIRES OR CHECKS TO BUY

03:20PM 17 EQUIPMENT FROM ARBURG?

03:20PM 18 A. I DON'T REMEMBER.

03:20PM 19 Q. YOU DON'T REMEMBER?

03:20PM 20 DO YOU RECOGNIZE THE MANUFACTURING FACILITY THAT IS

03:20PM 21 PICTURED IN 20208?

03:20PM 22 A. NO.

03:20PM 23 Q. OKAY. CAN YOU TAKE A LOOK AT EXHIBIT 20209. ACTUALLY,

03:21PM 24 IT'S PROBABLY THE NEXT ONE.

03:21PM 25 AND DO YOU RECOGNIZE THIS AS A LEASE AGREEMENT THAT I

03:21PM 1 THINK WAS MENTIONED WHEN MR. LEACH WAS TALKING TO YOU FOR
03:21PM 2 THERANOS TO LEASE HEADQUARTERS SPACE FROM STANFORD?

03:21PM 3 A. YES.

03:21PM 4 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20209.

03:21PM 5 MR. LEACH: NO OBJECTION, YOUR HONOR.

03:21PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:21PM 7 (DEFENDANT'S EXHIBIT 20209 WAS RECEIVED IN EVIDENCE.)

03:21PM 8 BY MR. COOPERSMITH:

03:21PM 9 Q. AND THEN THAT'S 137,000 SQUARE FOOT OF SPACE.

03:22PM 10 DO YOU SEE THAT?

03:22PM 11 A. YES.

03:22PM 12 Q. AND IF YOU GO NEXT TO 20210.

03:22PM 13 AND DO YOU RECOGNIZE EXHIBIT 20210 AS A LEASE FOR THE

03:22PM 14 SPACE IN NEWARK, CALIFORNIA?

03:22PM 15 A. YES.

03:22PM 16 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20210.

03:22PM 17 MR. LEACH: ALL 99 PAGES?

03:22PM 18 MR. COOPERSMITH: YES.

03:22PM 19 MR. LEACH: NO OBJECTION.

03:22PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:22PM 21 (DEFENDANT'S EXHIBIT 20210 WAS RECEIVED IN EVIDENCE.)

03:22PM 22 MR. COOPERSMITH: IF YOU COULD SHOW THE FIRST PAGE,

03:22PM 23 MR. ALLEN. THE SECOND PAGE.

03:22PM 24 Q. AND IF YOU LOOK AT PARAGRAPH A, IT REFERS TO THE NEWARK,

03:22PM 25 CALIFORNIA LOCATION?

03:22PM 1 A. YES.

03:22PM 2 Q. AND THAT'S THE ONE THAT WE WERE JUST TALKING ABOUT ACROSS

03:22PM 3 THE BAY --

03:22PM 4 A. YES.

03:22PM 5 Q. -- FROM PALO ALTO.

03:22PM 6 OKAY. IF YOU GO TO 20211.

03:23PM 7 DO YOU RECOGNIZE 20211 AS A LEASE FOR LABORATORY SPACE IN

03:23PM 8 ARIZONA?

03:23PM 9 A. YES.

03:23PM 10 MR. COOPERSMITH: OFFER 20211.

03:23PM 11 MR. LEACH: NO OBJECTION, YOUR HONOR.

03:23PM 12 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

03:23PM 13 (DEFENDANT'S EXHIBIT 20211 WAS RECEIVED IN EVIDENCE.)

03:23PM 14 BY MR. COOPERSMITH:

03:23PM 15 Q. THAT'S FOR THE THERANOS LAB THAT WE JUST TALKED ABOUT A

03:23PM 16 MOMENT AGO?

03:23PM 17 A. YES.

03:23PM 18 Q. AND THAT'S BECAUSE THERANOS OPENED A NUMBER OF STORES IN

03:23PM 19 THE PHOENIX, ARIZONA AREA; IS THAT RIGHT?

03:23PM 20 A. CORRECT.

03:23PM 21 Q. WITH WALGREENS.

03:23PM 22 IF WE GO TO EXHIBIT 20212.

03:23PM 23 DO YOU RECOGNIZE THAT AS AN EMAIL BETWEEN YOU AND A

03:23PM 24 MR. CASTANEDA REGARDING LEASING SPACE IN PENNSYLVANIA?

03:24PM 25 I'M SORRY, REGARDING A BUSINESS PERMIT FOR A NEW FACILITY

03:24PM 1 IN PENNSYLVANIA?

03:24PM 2 A. YES.

03:24PM 3 Q. AND IF YOU GO TO PAGE 3 OF THE EXHIBIT, YOU SEE THE EMAIL
03:24PM 4 IN THE MIDDLE OF THE PAGE FROM TRACY MASSON TO YOU WITH A COPY
03:24PM 5 TO NICHOLAS MENCHEL?

03:24PM 6 A. YES.

03:24PM 7 Q. AND DO YOU KNOW WHO TRACY MASSON IS?

03:24PM 8 A. SHE WAS A GENERAL MANAGER IN ARIZONA.

03:24PM 9 Q. RIGHT.

03:24PM 10 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20212.

03:24PM 11 MR. LEACH: HEARSAY, YOUR HONOR.

03:25PM 12 THE COURT: OVERRULED. IT CAN BE ADMITTED AND
03:25PM 13 PUBLISHED.

03:25PM 14 (DEFENDANT'S EXHIBIT 20212 WAS RECEIVED IN EVIDENCE.)

03:25PM 15 BY MR. COOPERSMITH:

03:25PM 16 Q. MS. SPIVEY, IF WE CAN START WITH THAT EMAIL THAT I WAS
03:25PM 17 JUST MENTIONING ON PAGE 3, THAT'S THE ONE FROM TRACY MASSON.

03:25PM 18 DO YOU SEE THAT?

03:25PM 19 A. YES.

03:25PM 20 Q. AND IT SAYS, DANISE -- I THINK YOU SAID BEFORE YOU AT ONE
03:25PM 21 POINT IN YOUR LIFE WENT BY THE NAME DANISE YAM?

03:25PM 22 A. YES.

03:25PM 23 Q. AND SO THAT'S HER REFERRING TO YOU?

03:25PM 24 A. YES.

03:25PM 25 Q. RIGHT. IT SAYS "DANISE.

03:25PM 1 "WE ARE FINALIZING A LEASE FOR A NEW FACILITY IN
03:25PM 2 PENNSYLVANIA. THE FACILITY IS LOCATED IN EAST PENNSBORO
03:25PM 3 TOWNSHIP. IT WILL BE READY FOR US TO LOCATE THERE LIKELY IN
03:25PM 4 MID-MAY."

03:25PM 5 DO YOU SEE THAT?

03:25PM 6 A. YES.

03:25PM 7 Q. AND DO YOU UNDERSTAND THAT THE SPACE THAT WAS BEING LEASED
03:25PM 8 IN PENNSYLVANIA HAD TO DO WITH OPENING A LAB IN PENNSYLVANIA?

03:26PM 9 A. KIND OF WHATEVER.

03:26PM 10 Q. YOU DO REMEMBER?

03:26PM 11 A. I'M NOT SURE AT THIS TIME.

03:26PM 12 Q. OKAY. CAN YOU TAKE A LOOK AT EXHIBIT 20213.

03:26PM 13 DO YOU RECOGNIZE 20213? AND, MS. SPIVEY, DO YOU RECOGNIZE
03:26PM 14 THIS AS A COMMERCIAL LEASE BETWEEN THERANOS AND A COMPANY
03:26PM 15 CALLED 1250 ASSOCIATES IN HARRISBURG, PENNSYLVANIA?

03:26PM 16 A. YES.

03:26PM 17 Q. AND DO YOU SEE IN PARAGRAPH 12 -- WELL, DO YOU SEE THAT IT
03:26PM 18 HAS TO DO WITH LEASING CERTAIN PREMISES, IF YOU LOOK AT
03:26PM 19 SECTION 2?

03:26PM 20 A. RIGHT.

03:26PM 21 Q. AND THOSE PREMISES WOULD BE IN CAMP HILL, PENNSYLVANIA?

03:27PM 22 A. YES.

03:27PM 23 Q. AND IT WOULD BE 14,556 SQUARE FEET OF SPACE?

03:27PM 24 A. YES.

03:27PM 25 Q. AND YOU'RE FAMILIAR WITH THIS LEASE BECAUSE YOU WERE --

03:27PM 1 NEEDED TO BE INVOLVED WITH THE CONTRACTS THAT THERANOS HAD;
03:27PM 2 RIGHT?

03:27PM 3 A. RIGHT.

03:27PM 4 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER 20213.

03:27PM 5 MR. LEACH: NO OBJECTION, YOUR HONOR.

03:27PM 6 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

03:27PM 7 (DEFENDANT'S EXHIBIT 20213 WAS RECEIVED IN EVIDENCE.)

03:27PM 8 BY MR. COOPERSMITH:

03:27PM 9 Q. AND DOES THIS REFRESH YOUR MEMORY, MS. SPIVEY, THAT
03:27PM 10 THERANOS WAS LEASING SPACE TO OPEN A LAB IN PENNSYLVANIA?

03:27PM 11 A. I'M JUST LOOKING AT THIS AGREEMENT, AND THERANOS HAS A
03:27PM 12 LEASE AGREEMENT, BUT I DON'T REMEMBER AT THIS TIME WHETHER WE
03:27PM 13 WERE USING IT FOR THE LAB SERVICE OR ANY OTHER PURPOSE. I JUST
03:28PM 14 DON'T REMEMBER.

03:28PM 15 Q. OKAY. CAN YOU TAKE A LOOK AT EXHIBIT 20214.

03:28PM 16 DO YOU RECOGNIZE THIS AS AN EMAIL AMONG YOURSELF AND
03:28PM 17 MR. BALWANI AND OTHER EMPLOYEES OF THERANOS?

03:28PM 18 A. YES.

03:28PM 19 Q. AND IT'S DATED NEAR THE END OF JANUARY 2016?

03:28PM 20 A. YES.

03:28PM 21 Q. AND THIS DOCUMENT IS AN EMAIL THAT WAS SENT WITHIN THE
03:28PM 22 THERANOS EMAIL SYSTEM?

03:28PM 23 A. YES.

03:28PM 24 Q. AND IF YOU LOOK AT THE EMAIL FROM MR. BALWANI ON
03:28PM 25 JANUARY 25TH TO SCOTT MARMER AND YOU --

03:28PM 1 A. YES.

03:28PM 2 Q. -- IT'S TALKING ABOUT THE EXPIRATION DATES FOR CERTAIN

03:29PM 3 LEASES?

03:29PM 4 A. YES.

03:29PM 5 Q. AND THIS WAS AN EMAIL THAT WAS PART OF THE BUSINESS OF

03:29PM 6 THERANOS?

03:29PM 7 A. YES.

03:29PM 8 Q. AND IN ORDER TO DO YOUR JOB AND FOR MR. MARMER TO DO HIS

03:29PM 9 JOB, IT WAS NECESSARY TO CONVEY ACCURATE INFORMATION ABOUT

03:29PM 10 LEASES, IN THIS CASE IN ORDER TO MAKE SURE THAT TASKS WERE

03:29PM 11 HANDLED APPROPRIATELY?

03:29PM 12 A. YES.

03:29PM 13 Q. AND IF THERE WAS EVER A NEED TO REFER TO AN EXHIBIT LIKE

03:29PM 14 THIS OR AN EMAIL LIKE THIS FOR REFERENCE, IT WOULD BE KEPT IN

03:29PM 15 THE SYSTEM SO THAT SOMEBODY COULD DO THAT; RIGHT?

03:29PM 16 A. YES.

03:29PM 17 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20214.

03:29PM 18 MR. LEACH: NO OBJECTION, YOUR HONOR.

03:29PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:29PM 20 (DEFENDANT'S EXHIBIT 20214 WAS RECEIVED IN EVIDENCE.)

03:29PM 21 BY MR. COOPERSMITH:

03:29PM 22 Q. IF YOU GO TO THE FIRST PAGE, YOU SEE THAT WAS AN EMAIL

03:30PM 23 FROM MR. BALWANI TO MR. MARMER AND YOURSELF?

03:30PM 24 A. YES.

03:30PM 25 Q. SO, WHO IS MR. MARMER?

03:30PM 1 A. HE WAS ONE OF THE LEGAL COUNSEL AT THERANOS.

03:30PM 2 Q. OKAY. SO YOU SEE THERE'S A LIST OF LEASES, AND I THINK
03:30PM 3 SOME OF THEM WE WERE TALKING ABOUT. I DON'T THINK WE TALKED
03:30PM 4 ABOUT THE LAST TWO, LOS ANGELES, IS THAT L.A.?

03:30PM 5 DO YOU SEE THAT?

03:30PM 6 A. YES.

03:30PM 7 Q. AND DO YOU KNOW WHAT THE SPACE WAS THAT THERANOS HAD IN
03:30PM 8 LOS ANGELES?

03:30PM 9 A. WE HAD A -- SOME KIND OF CREATIVE TEAM, LIKE CREATIVE
03:30PM 10 DESIGN OR SOMETHING LIKE THAT, OFFICE SPACE.

03:30PM 11 Q. OKAY. AND HOW ABOUT EMC?

03:30PM 12 DO YOU KNOW WHO THAT IS?

03:30PM 13 A. EMC WAS A LAB AT THE BEGINNING WHEN WE FIRST LEASED THAT,
03:31PM 14 AND THEN AT SOME POINT IT JUST BECAME PART OF THE OFFICE.

03:31PM 15 Q. OKAY. AND YOU SEE THAT IN THIS CHART WE'RE LOOKING AT, IT
03:31PM 16 HAS THE EXPIRATION DATE OF EACH OF THE LEASES?

03:31PM 17 A. YES.

03:31PM 18 Q. SO, FOR EXAMPLE, FOR THE HEADQUARTERS THE LEASE EXPIRATION
03:31PM 19 DATE IS 2029?

03:31PM 20 A. YES.

03:31PM 21 Q. AND NEWARK, 2023?

03:31PM 22 A. YES.

03:31PM 23 Q. AND THEN ARIZONA, 2020.

03:31PM 24 DO YOU SEE THAT?

03:31PM 25 A. YES.

03:31PM 1 Q. AND THEN THE PENNSYLVANIA, 2022; RIGHT?

03:31PM 2 A. YES.

03:31PM 3 Q. AND THEN 2018 AND 2016.

03:31PM 4 DO YOU SEE THAT?

03:31PM 5 A. YES.

03:31PM 6 Q. AND SO IT LOOKS LIKE THE EMC LEASE WAS JUST COMING UP THAT
03:31PM 7 YEAR; RIGHT?

03:31PM 8 A. YES.

03:31PM 9 Q. AND LET'S TALK ABOUT RESEARCH AND DEVELOPMENT FOR A
03:31PM 10 MINUTE.

03:32PM 11 I THINK YOU MAY HAVE SAID THIS ON DIRECT, BUT THE COMPANY
03:32PM 12 SPENT QUITE A LOT OF MONEY ON RESEARCH AND DEVELOPMENT
03:32PM 13 ACTIVITY; IS THAT FAIR?

03:32PM 14 A. YES.

03:32PM 15 Q. IF YOU COULD TAKE A LOOK AT EXHIBIT 578, WHICH IS ALREADY
03:32PM 16 IN EVIDENCE.

03:32PM 17 IN PARTICULAR, IF YOU GO TO COLUMN D, THAT'S IN 2009, AND
03:32PM 18 YOU SEE IT HAS RESEARCH AND DEVELOPMENT EXPENDITURES FOR 2009,
03:32PM 19 \$10,256,739.

03:32PM 20 DO YOU SEE THAT?

03:32PM 21 A. YES.

03:32PM 22 Q. AND THAT'S ACCURATE?

03:32PM 23 A. YES.

03:32PM 24 Q. AND THEN FOR 2010, THE RESEARCH AND DEVELOPMENT
03:32PM 25 EXPENDITURE'S ABOUT 13.5 MILLION?

03:32PM 1 A. YES.

03:32PM 2 Q. AND THAT'S ACCURATE?

03:32PM 3 A. YES.

03:32PM 4 Q. AND THEN FOR 2011, THE RESEARCH AND DEVELOPMENT

03:32PM 5 EXPENDITURE'S ABOUT 22 MILLION?

03:32PM 6 A. YES.

03:32PM 7 Q. AND THAT'S ACCURATE?

03:32PM 8 A. YES.

03:33PM 9 Q. AND DO YOU SEE GENERAL AND ADMINISTRATIVE AND TOTAL

03:33PM 10 OPERATING EXPENSES?

03:33PM 11 A. YES.

03:33PM 12 Q. AND GENERAL AND ADMINISTRATIVE EXPENSES, THAT WOULD BE

03:33PM 13 THINGS LIKE PAYROLL, FOR EXAMPLE?

03:33PM 14 A. PAYROLL WOULD BE BOTH R&D AND GENERAL AND ADMINISTRATIVE.

03:33PM 15 Q. DEPENDING ON WHETHER THE PEOPLE WORK FOR R&D OR OTHERWISE?

03:33PM 16 A. YES.

03:33PM 17 Q. OKAY. WHAT OTHER THINGS WOULD BE INCLUDED IN GENERAL AND

03:33PM 18 ADMINISTRATIVE EXPENSES?

03:33PM 19 A. RENT, LEGAL, SOMETHING LIKE THAT.

03:33PM 20 Q. OKAY. THANKS.

03:33PM 21 IF YOU GO TO THE NEXT EXHIBIT, IT'S -- I DON'T THINK THIS

03:33PM 22 ONE IS ADMITTED, OR IT MIGHT BE.

03:33PM 23 YEAH, IF YOU COULD GO TO EXHIBIT 4176. AND THIS IS NOT IN

03:33PM 24 EVIDENCE YET.

03:34PM 25 DO YOU SEE THAT -- OH, YOU'RE STILL LOOKING.

03:34PM 1 DO YOU SEE THAT'S A CHART AND IT SHOWS RESEARCH AND
03:34PM 2 DEVELOPMENT EXPENSE FOR 2009 THROUGH 2013 AT THIS TIME.
03:34PM 3 DO YOU SEE THAT?
03:34PM 4 A. YES.
03:34PM 5 Q. AND DID YOU PREPARE THAT?
03:34PM 6 A. YES.
03:34PM 7 Q. AND THIS WAS PART OF YOUR WORK AT THERANOS, PART OF ITS
03:34PM 8 BUSINESS?
03:34PM 9 A. YES.
03:34PM 10 MR. COOPERSMITH: YOUR HONOR, WE OFFER 4176.
03:34PM 11 MR. LEACH: NO OBJECTION, YOUR HONOR.
03:34PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
03:34PM 13 (GOVERNMENT'S EXHIBIT 4176 WAS RECEIVED IN EVIDENCE.)
03:34PM 14 BY MR. COOPERSMITH:
03:34PM 15 Q. AND THEN THE GENERAL ADMINISTRATIVE EXPENSES ARE LISTED IN
03:34PM 16 THE RESEARCH AND DEVELOPMENT EXPENSES.
03:34PM 17 DO YOU SEE THAT?
03:34PM 18 A. YES.
03:34PM 19 Q. AND SO FOR 2013, THE COMPANY SPENT 66,757 -- I'M SORRY.
03:35PM 20 \$66,757,474 ON RESEARCH AND DEVELOPMENT?
03:35PM 21 A. YES.
03:35PM 22 Q. AND IS THAT ACCURATE?
03:35PM 23 A. YES.
03:35PM 24 Q. AND, YOU KNOW, EARLIER WHEN YOU WERE TALKING TO MR. LEACH,
03:35PM 25 YOU TALKED ABOUT AUDITORS, AND I THINK YOU SAID THAT AFTER

03:35PM 1 2007, 2008 WHEN ERNST & YOUNG WERE THE AUDITORS, THERANOS HAD
03:35PM 2 AUDITORS, BUT THEY DIDN'T COMPLETE AN AUDIT REPORT.

03:35PM 3 DO YOU REMEMBER THAT?

03:35PM 4 A. YES.

03:35PM 5 Q. BUT THEY STILL WORKED WITH YOU WITHIN THE COMPANY; RIGHT?

03:35PM 6 A. YES.

03:35PM 7 Q. SO DOES THE FACT THAT AN AUDITOR DIDN'T COME IN AND SAY
03:35PM 8 THAT THE 66 MILLION IN RESEARCH AND DEVELOPMENT EXPENSES IS
03:35PM 9 ACCURATE, DOES THAT MEAN THAT IT'S NOT ACCURATE?

03:35PM 10 A. NO.

03:35PM 11 Q. SO IT ACTUALLY IS ACCURATE; RIGHT?

03:35PM 12 A. TO THE BEST OF MY KNOWLEDGE.

03:35PM 13 Q. AND THAT'S BECAUSE IT WAS YOUR JOB TO TRY TO MAKE IT
03:35PM 14 ACCURATE; RIGHT?

03:35PM 15 A. RIGHT.

03:35PM 16 Q. AND WHEN YOU HAVE OUTSIDE AUDITORS, THE POINT OF THAT IS
03:35PM 17 SOME OTHER PARTIES MIGHT FEEL MORE COMFORTABLE IF AUDITORS WERE
03:35PM 18 KIND OF LOOKING OVER YOUR SHOULDER AND DOUBLE-CHECKING YOUR
03:36PM 19 WORK.

03:36PM 20 IS THAT A FAIR WAY TO PUT IT?

03:36PM 21 A. YES.

03:36PM 22 Q. BUT THERE'S NO REQUIREMENT THAT THAT OCCUR; RIGHT?

03:36PM 23 A. YES.

03:36PM 24 Q. BUT THERE ARE CERTAIN COMPANIES -- AND TELL ME IF YOU KNOW
03:36PM 25 THIS FROM YOUR EXPERIENCE AS A CPA -- BUT THERE ARE CERTAIN

03:36PM 1 COMPANIES THAT ACTUALLY ARE REQUIRED TO HAVE AUDITS?

03:36PM 2 A. YES.

03:36PM 3 Q. AND THOSE WOULD BE PUBLIC COMPANIES?

03:36PM 4 A. YES.

03:36PM 5 Q. AND THERANOS WAS NEVER A PUBLIC COMPANY?

03:36PM 6 A. CORRECT.

03:36PM 7 Q. AND LOTS OF PRIVATE COMPANIES DON'T HAVE AUDIT REPORTS

03:36PM 8 THAT ARE SIGNED OFF ON EVERY YEAR; RIGHT?

03:36PM 9 A. I DON'T KNOW.

03:36PM 10 Q. OKAY. BUT THEY DON'T HAVE TO HAVE THEM; RIGHT?

03:36PM 11 A. CORRECT.

03:36PM 12 Q. AND IF A COMPANY -- IN THIS CASE THERANOS HAD KPMG WHO

03:36PM 13 ACTUALLY WAS WORKING WITH YOU AND YOU COULD CONSULT WITH THEM

03:36PM 14 IF YOU WANTED; RIGHT?

03:36PM 15 A. YES.

03:36PM 16 Q. BUT SOME COMPANIES, IF THEY'RE PRIVATE, DON'T NEED TO HAVE

03:36PM 17 THAT SERVICE AT ALL? THEY DON'T NEED TO PAY AUDITORS ANYTHING;

03:36PM 18 RIGHT?

03:36PM 19 A. YES.

03:36PM 20 Q. AND AUDITORS AREN'T -- THEY DON'T COME CHEAP; RIGHT?

03:36PM 21 A. I DON'T KNOW HOW YOU DEFINE "CHEAP."

03:37PM 22 Q. OKAY. BUT YOU HAVE TO -- I MEAN, THEY EXPECT TO BE PAID

03:37PM 23 FOR THEIR WORK; RIGHT?

03:37PM 24 A. YES.

03:37PM 25 Q. AND TO DO AUDIT REPORTS, YOU HAVE TO TAKE INVESTOR MONEY,

03:37PM 1 OR WHATEVER MONEY YOU HAVE, AND GIVE IT TO THE AUDITORS SO THEY
03:37PM 2 CAN DO THAT; RIGHT?

03:37PM 3 A. YES.

03:37PM 4 Q. LET'S TAKE A LOOK AT EXHIBIT 5454. THIS WAS AN EXHIBIT
03:37PM 5 THAT YOU SAW ON DIRECT.

03:37PM 6 AND THIS WAS THE EMAIL RELATING TO SOMETHING CALLED
03:37PM 7 HORIZON MEDIA.

03:37PM 8 DO YOU SEE THAT?

03:37PM 9 A. YES.

03:37PM 10 Q. AND IF YOU LOOK AT THE PAGE ON THE SCREEN, IT'S FROM
03:37PM 11 JULY 25TH, 2015?

03:38PM 12 A. YES.

03:38PM 13 Q. AND THERE WAS A WIRE TRANSFER THAT YOU TALKED ABOUT
03:38PM 14 GOING -- THE EMAIL REFERS TO A WIRE TRANSFER; RIGHT?

03:38PM 15 A. YES.

03:38PM 16 Q. THERE'S ACTUALLY AN ATTACHMENT TO THE EMAIL WHICH IS AT
03:38PM 17 PAGE 4 AND 5 OF THE EXHIBIT.

03:38PM 18 I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT THAT.

03:38PM 19 DO YOU SEE THAT IN FRONT OF YOU?

03:38PM 20 A. YES.

03:38PM 21 Q. AND SO DO YOU SEE THAT IT SAYS THE THERANOS EXPERIENCE?

03:38PM 22 A. YES.

03:38PM 23 Q. AND IT SAYS "SMALLER SAMPLES. SMALLER NEEDLES. A BETTER
03:38PM 24 EXPERIENCE"?

03:38PM 25 A. YES.

03:38PM 1 Q. AND THEN IT SAYS, "MANY OF THERANOS TESTS REQUIRE ONLY A
03:38PM 2 FEW DROPS OF BLOOD."
03:38PM 3 A. YES.
03:38PM 4 Q. DOES IT SAY ALL OF THERANOS TESTS REQUIRE ONLY A FEW DROPS
03:38PM 5 OF BLOOD?
03:38PM 6 A. NO.
03:38PM 7 Q. AND THEN IT SAYS, "ALL OF OUR TESTS, INCLUDING
03:38PM 8 VENOUS DRAW, REQUIRE SMALLER SAMPLES THAN TRADITIONAL LABS."
03:38PM 9 DO YOU SEE THAT?
03:38PM 10 A. YES.
03:38PM 11 Q. ARE YOU FAMILIAR WITH A TYPE OF VENOUS SAMPLE KNOWN AS A
03:39PM 12 BUTTERFLY NEEDLE?
03:39PM 13 A. NO.
03:39PM 14 Q. BECAUSE THAT WASN'T REALLY YOUR AREA; RIGHT?
03:39PM 15 A. CORRECT.
03:39PM 16 Q. BUT IN ANY EVENT, YOU UNDERSTAND THE DIFFERENCE BETWEEN A
03:39PM 17 VENOUS DRAW AND A FINGERSTICK?
03:39PM 18 A. YES.
03:39PM 19 Q. AND A VENOUS DRAW IS LIKE FROM THE ARM?
03:39PM 20 A. YES.
03:39PM 21 Q. AND THAT'S LIKE A TRADITIONAL WAY OF DRAWING BLOOD; IS
03:39PM 22 THAT CORRECT?
03:39PM 23 A. YES.
03:39PM 24 Q. AND THERANOS WAS WORKING ON A FINGERSTICK METHOD WHERE YOU
03:39PM 25 COULD HAVE YOUR FINGERTIP PRICKED AND IT COULD BE DRAWN THAT

03:39PM 1 WAY; RIGHT?

03:39PM 2 A. YES.

03:39PM 3 Q. AND DO YOU SEE THAT IT REFERENCES VENOUS DRAWS IN THIS

03:39PM 4 EXHIBIT?

03:39PM 5 A. YES.

03:39PM 6 Q. AND THEN THE NEXT LINE SAYS, "WHETHER IT IS A FEW DROPS

03:39PM 7 COLLECTED WITH A FINGERSTICK, OR THE SMALLEST VENOUS DRAW

03:39PM 8 SAMPLE POSSIBLE, THERANOS TESTS MEAN LESS BLOOD, AN EASIER

03:39PM 9 PROCESS, AND A CLEAR DIFFERENCE."

03:39PM 10 DO YOU SEE THAT?

03:39PM 11 A. YES.

03:39PM 12 Q. AND THEN IT TALKS ABOUT PRICING.

03:39PM 13 AND THERANOS ACTUALLY POSTED ALL OF THEIR PRICES FOR THESE

03:39PM 14 BLOOD TESTS ON ITS WEBSITE; RIGHT?

03:39PM 15 A. I'M NOT SURE.

03:39PM 16 Q. THEN IF YOU GO TO THE NEXT PAGE, AT THE TOP IT SAYS,

03:40PM 17 "THERANOS IS CONVENIENTLY LOCATED IN OVER 40 WALGREENS

03:40PM 18 LOCATIONS IN THE GREATER PHOENIX AREA."

03:40PM 19 DO YOU SEE THAT?

03:40PM 20 A. YES.

03:40PM 21 Q. AND YOU KNOW THAT THERANOS HAD 40 WALGREENS LOCATIONS IN

03:40PM 22 THE GREATER PHOENIX AREA?

03:40PM 23 A. YES.

03:40PM 24 Q. OKAY. IN TERMS OF -- IF WE CAN GO TO THE FIRST PAGE.

03:40PM 25 DO YOU KNOW ANYTHING ABOUT, LIKE, WHAT THIS MONEY WAS USED

03:40PM 1 FOR EXACTLY?

03:40PM 2 A. ONLY WHAT THE EMAIL SAID.

03:40PM 3 Q. BEYOND THAT YOU DON'T KNOW ANYTHING ABOUT IT?

03:40PM 4 A. CORRECT.

03:40PM 5 Q. SO YOU DON'T KNOW, FOR EXAMPLE, WHAT ADS, IF ANY, EVER

03:40PM 6 AIRED IN THE PHOENIX AREA?

03:40PM 7 A. CORRECT.

03:40PM 8 Q. AND WHEN THEY AIRED?

03:40PM 9 A. CORRECT.

03:40PM 10 Q. AND WHAT THEY SAID?

03:40PM 11 A. YES.

03:40PM 12 Q. OKAY. LET'S GO TO EXHIBIT 3233. THIS IS ALSO IN

03:41PM 13 EVIDENCE.

03:41PM 14 THIS IS THE TAX RETURN INFORMATION THAT YOU LOOKED AT

03:41PM 15 BEFORE WITH MR. LEACH?

03:41PM 16 A. YES.

03:41PM 17 Q. AND IF YOU GO TO PAGE 4 OF THE EXHIBIT.

03:41PM 18 DO YOU SEE THAT THERE'S A BOX AT THE TOP, AND IT'S LIKE

03:41PM 19 BOX D, AND IT SAYS TOTAL ASSETS, \$507,532,502?

03:41PM 20 A. YES.

03:41PM 21 Q. AND WAS THAT ACCURATE AT THE TIME OF THIS TAX RETURN?

03:41PM 22 A. YES.

03:41PM 23 Q. AND THAT WAS FOR THE TAX YEAR 2015?

03:41PM 24 A. YES.

03:41PM 25 Q. AND THAT ASSET NUMBER DOES NOT INCLUDE THINGS LIKE THE

03:42PM 1 VALUE OF ANY INTELLECTUAL PROPERTY, DOES IT?

03:42PM 2 A. IT DOES NOT.

03:42PM 3 Q. OKAY. LET'S GO BACK TO EXHIBIT 5172.

03:42PM 4 ACTUALLY, TAKE THAT DOWN FOR ME, MR. ALLEN. I HAVE A
03:42PM 5 COUPLE OF QUESTIONS FIRST.

03:42PM 6 SO, MS. SPIVEY, DO YOU REMEMBER THAT THERE WAS A POINT IN
03:42PM 7 TIME IN 2016 WHEN MR. BALWANI LEFT THE COMPANY?

03:42PM 8 A. YES.

03:42PM 9 Q. AND IF WE COULD LOOK AT EXHIBIT 7664, OR HAVE MS. SPIVEY
03:42PM 10 LOOK AT IT.

03:43PM 11 DO YOU HAVE 7664?

03:43PM 12 A. YES.

03:43PM 13 Q. AND DO YOU SEE THAT IT'S A PRESS RELEASE?

03:43PM 14 A. YES.

03:43PM 15 Q. AND IT'S DATED MAY 11TH, 2016?

03:43PM 16 A. YES.

03:43PM 17 Q. AND DO YOU RECOGNIZE THAT AS A PRESS RELEASE THAT THERANOS
03:43PM 18 ISSUED ON THAT DATE?

03:43PM 19 A. I DON'T REMEMBER.

03:43PM 20 Q. YOU DON'T REMEMBER. OKAY.

03:43PM 21 DO YOU REMEMBER THAT MR. BALWANI'S DATE, EFFECTIVE DATE OF
03:43PM 22 LEAVING THE COMPANY WAS MAY 11TH, 2016?

03:43PM 23 A. I DON'T REMEMBER THE EXACT DATE.

03:43PM 24 Q. OKAY. AND IF YOU LOOK AT THE DOCUMENT IN FRONT OF YOU AND
03:44PM 25 YOU LOOK AT THE REFERENCE TO THAT, DOES THAT REFRESH YOUR

03:44PM 1 MEMORY THAT THE EFFECTIVE DATE OF HIS DEPARTURE FROM THERANOS

03:44PM 2 WAS MAY 11TH, 2016?

03:44PM 3 A. YES.

03:44PM 4 Q. AND THAT DAY THAT MR. BALWANI LEFT, YOU WENT TO HIS OFFICE

03:44PM 5 TO SAY GOODBYE?

03:44PM 6 A. YES.

03:44PM 7 Q. AND YOU TOLD HIM THAT YOU WISHED HIM WELL?

03:44PM 8 A. YES.

03:44PM 9 Q. AND YOU TEARED UP A LITTLE BIT?

03:44PM 10 A. YES.

03:44PM 11 Q. BECAUSE YOU HAD BEEN WORKING WITH MR. BALWANI FOR A WHILE;

03:44PM 12 RIGHT?

03:44PM 13 A. YES.

03:44PM 14 Q. AND YOU WERE SAD TO SEE HIM GO?

03:44PM 15 A. YES.

03:44PM 16 Q. IF YOU TAKE A LOOK NOW AT 5172. THAT'S IN EVIDENCE

03:44PM 17 ALREADY. AND I WANT YOU TO LOOK AT A PARTICULAR COLUMN. IF WE

03:44PM 18 CAN PUT UP 5172.

03:45PM 19 AND IN PARTICULAR, MR. ALLEN, GO TO COLUMN JU.

03:45PM 20 OKAY. DO YOU SEE THAT'S THE WEEK THAT MR. BALWANI LEFT

03:45PM 21 THE BUILDING; RIGHT?

03:45PM 22 A. YES.

03:45PM 23 Q. LIKE FOR THE LAST TIME; RIGHT?

03:45PM 24 A. RIGHT.

03:45PM 25 Q. AND ACTUALLY, YOU KNOW THAT HE -- HIS -- WHAT IS THE RIGHT

03:45PM 1 WORD? HE ACTUALLY WAS STAYING ON AS A CONSULTANT POTENTIALLY
03:45PM 2 UNTIL JULY; RIGHT? THERE WAS A LITTLE EXTRA TAIL OF TIME THAT
03:45PM 3 MR. BALWANI WAS AT LEAST AVAILABLE.

03:45PM 4 DO YOU REMEMBER THAT?

03:45PM 5 A. YEAH. YEAH.

03:45PM 6 Q. BUT THE EFFECTIVE DATE OF HIS DEPARTURE WAS MAY 11TH,
03:45PM 7 2016?

03:45PM 8 A. RIGHT.

03:45PM 9 Q. AND THE AMOUNT OF MONEY THAT THE COMPANY HAD IN THE BANK
03:45PM 10 WHEN MR. BALWANI LEFT, CAN YOU READ THAT FIGURE?

03:45PM 11 A. \$351 MILLION.

03:46PM 12 Q. OKAY. THANK YOU.

03:46PM 13 YOUR HONOR, COULD I HAVE MOMENT TO CONFER?

03:46PM 14 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

03:46PM 15 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

03:46PM 16 THE COURT: REDIRECT?

03:46PM 17 MR. LEACH: THANK YOU, YOUR HONOR.

03:46PM 18 **REDIRECT EXAMINATION**

03:47PM 19 BY MR. LEACH:

03:47PM 20 Q. MS. SPIVEY, MR. COOPERSMITH ENDED WITH SOME OF THE COLUMNS
03:47PM 21 FROM EXHIBIT 5172 WITH THE TOTAL CASH BALANCE IN MAY OF 2016.

03:47PM 22 DO YOU RECALL THAT?

03:47PM 23 A. YES.

03:47PM 24 Q. AND YOU UNDERSTOOD THAT THAT WAS LARGELY MONEY FROM
03:47PM 25 INVESTORS; CORRECT?

03:47PM 1 A. YES.

03:47PM 2 Q. OKAY. AND YOU DON'T KNOW WHAT INVESTORS WERE TOLD BEFORE

03:47PM 3 THEY GAVE MONEY TO THERANOS; RIGHT?

03:47PM 4 A. RIGHT.

03:47PM 5 Q. OKAY. YOU DON'T KNOW WHAT PROJECTIONS THEY WERE GIVEN?

03:47PM 6 A. RIGHT.

03:47PM 7 Q. OKAY. AND YOU DON'T KNOW WHAT HAPPENED -- OR YOU STAYED

03:47PM 8 WITH THE COMPANY THROUGH 2017?

03:47PM 9 A. JANUARY 2017.

03:47PM 10 Q. OKAY. AND YOU LEAVE THERANOS BECAUSE OF A LAYOFF?

03:47PM 11 A. YES.

03:47PM 12 Q. AND YOU DON'T KNOW WHETHER INVESTORS AT THE END OF THE DAY

03:47PM 13 LOST MONEY OR GAINED MONEY FROM THEIR INVESTMENTS IN THERANOS?

03:47PM 14 A. CORRECT.

03:47PM 15 Q. OKAY. YOU WERE ALSO ASKED A NUMBER OF QUESTIONS ABOUT

03:48PM 16 SOME OF THE CUSTOMER RECEIPTS IN EXHIBIT 5172.

03:48PM 17 AND IF WE CAN DISPLAY THAT, MS. WACHS.

03:48PM 18 OKAY. AND IF WE CAN PLEASE -- I WANT TO WORK BACKWARDS

03:48PM 19 THROUGH THE DEMONSTRATIVE THAT MR. COOPERSMITH SHOWED YOU.

03:48PM 20 IF WE CAN START WITH ROW -- OR COLUMN FC.

03:48PM 21 DO YOU SEE THERE'S CUSTOMER RECEIPTS OF \$75 MILLION?

03:48PM 22 A. YES.

03:48PM 23 Q. AND YOU KNOW THAT'S FROM WALGREENS?

03:49PM 24 A. YES.

03:49PM 25 Q. AND THERANOS NEVER RECOGNIZED \$75 MILLION IN REVENUE FROM

03:49PM 1 WALGREENS; RIGHT?

03:49PM 2 A. CORRECT.

03:49PM 3 Q. THAT'S BECAUSE IN YOUR JUDGMENT THERANOS HADN'T EARNED THE

03:49PM 4 MONEY?

03:49PM 5 A. RIGHT.

03:49PM 6 Q. AND THERE WAS A POSSIBILITY THAT THERANOS WOULD HAVE TO

03:49PM 7 GIVE THE MONEY BACK SOME DAY?

03:49PM 8 MR. COOPERSMITH: YOUR HONOR, THIS IS LEADING.

03:49PM 9 THE COURT: WELL, I THINK IT WAS TESTIMONY THAT WAS

03:49PM 10 ALREADY RECEIVED, SO I'LL ALLOW SOME LATITUDE.

03:49PM 11 YOU CAN CONTINUE.

03:49PM 12 BY MR. LEACH:

03:49PM 13 Q. AND YOU DIDN'T RECOGNIZE THE REVENUE BECAUSE YOU KNEW THAT

03:49PM 14 THERANOS MIGHT HAVE TO GIVE THAT BACK SOME DAY?

03:49PM 15 MR. COOPERSMITH: OBJECTION, YOUR HONOR. IT'S

03:49PM 16 LEADING.

03:49PM 17 THE COURT: IT IS. I THINK THIS TESTIMONY IS IN

03:49PM 18 EVIDENCE ALREADY THROUGH YOU, AND PERHAPS MR. LEACH, BUT -- SO

03:49PM 19 I'M GOING TO ALLOW IT.

03:49PM 20 MR. COOPERSMITH: OKAY.

03:49PM 21 THE COURT: YOU CAN ANSWER THE QUESTION.

03:49PM 22 THE WITNESS: OKAY. THERE COULD BE A POSSIBILITY.

03:49PM 23 BY MR. LEACH:

03:49PM 24 Q. OKAY. AND THERE WERE INSTANCES IN THE PAST, FOR EXAMPLE,

03:49PM 25 WITH THE 18.5 MILLION FROM BLUE CROSS BLUE SHIELD WHERE YOU

03:50PM 1 GAVE THE MONEY BACK?

03:50PM 2 A. YES.

03:50PM 3 Q. YOU DID NOT RECOGNIZE REVENUE ON IT?

03:50PM 4 A. RIGHT.

03:50PM 5 Q. OKAY. AND THE CUSTOMER RECEIPTS WE'RE TALKING ABOUT IN

03:50PM 6 LINE 26, DOES THAT INCLUDE SAFEWAY?

03:50PM 7 A. IT SHOULD BE.

03:50PM 8 Q. DOES THAT INCLUDE INSURANCE COMPANIES?

03:50PM 9 A. YES.

03:50PM 10 Q. OKAY. AND YOU DON'T RECALL ANY INSTANCES WHERE YOU

03:50PM 11 ACTUALLY RECOGNIZED REVENUE ON THAT MONEY?

03:50PM 12 A. CORRECT.

03:50PM 13 Q. OKAY. YOU WERE ALSO ASKED ABOUT THE ARANCA REPORTS AND

03:50PM 14 HOW THOSE WERE USED.

03:50PM 15 AND DID I UNDERSTAND THAT YOU GAVE THE ARANCA REPORTS TO

03:50PM 16 THE BOARD?

03:50PM 17 A. I GAVE THE REPORT TO ELIZABETH HOLMES AND SUNNY BALWANI.

03:50PM 18 Q. OKAY. AND WE LOOKED AT SOME MINUTES WHERE IT APPEARED

03:50PM 19 THAT THE ARANCA REPORTS WERE ACTUALLY SHARED WITH THE BOARD?

03:50PM 20 A. RIGHT.

03:50PM 21 Q. AND YOU HAD SOME LEVEL OF UNDERSTANDING THAT THAT MIGHT

03:51PM 22 HAPPEN?

03:51PM 23 A. YES.

03:51PM 24 Q. AND BY SAYING THAT YOU WERE PAYING ARANCA THOUSANDS OF

03:51PM 25 DOLLARS, DID YOU MEAN TO DIMINISH THE QUALITY OF THEIR WORK?

03:51PM 1 A. NO.

03:51PM 2 Q. DID YOU DO YOUR BEST TO PROVIDE ARANCA ACCURATE

03:51PM 3 INFORMATION?

03:51PM 4 A. YES.

03:51PM 5 Q. IS THERE ANY REASON TO GIVE ARANCA ONE SET OF NUMBERS AND

03:51PM 6 DIFFERENT PARTIES DIFFERENT NUMBERS?

03:51PM 7 A. NOT THAT I KNOW.

03:51PM 8 Q. OKAY.

03:51PM 9 MAY I HAVE ONE MOMENT, YOUR HONOR?

03:51PM 10 THE COURT: YES.

03:51PM 11 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

03:51PM 12 BY MR. LEACH:

03:51PM 13 Q. BRIEFLY, MS. SPIVEY. YOU WERE ALSO SHOWN SOME DOCUMENTS

03:51PM 14 RELATING TO MR. BALWANI'S EXERCISE OF OPTIONS AND PURCHASE OF

03:51PM 15 THERANOS STOCK.

03:51PM 16 DO YOU RECALL SOME OF THAT TESTIMONY?

03:52PM 17 A. YES.

03:52PM 18 Q. AND YOU HAVE NO UNDERSTANDING OF MR. BALWANI'S DIALOGUE

03:52PM 19 WITH THE I.R.S. ABOUT WHAT TAXES, IF ANY, HE PAID ON THAT?

03:52PM 20 A. CORRECT.

03:52PM 21 Q. YOUR FOCUS WAS THERANOS, NOT ON THAT?

03:52PM 22 A. YES.

03:52PM 23 Q. OKAY.

03:52PM 24 THANK YOU, MS. SPIVEY.

03:52PM 25 I HAVE NOTHING FURTHER, YOUR HONOR.

RECROSS-EXAMINATION

BY MR. COOPERSMITH:

Q. MS. SPIVEY, BRIEFLY.

SO MR. LEACH JUST MENTIONED THE STOCK PURCHASES?

AND JUST TO CONFIRM, MR. BALWANI PURCHASED STOCK FROM
THERANOS; CORRECT?

A. YES.

Q. AND HE NEVER SOLD ANY OF THAT STOCK?

A. YES.

Q. AND MR. LEACH ALSO MENTIONED THE \$75 MILLION FROM
WALGREENS?

A. YES.

Q. AND ACTUALLY, THERE WAS OTHER MONEY FROM WALGREENS EVEN IN
ADDITION TO THE 75 MILLION; RIGHT?

A. YES.

Q. AND THERANOS NEVER REFUNDED WALGREENS THE 75 MILLION?

MR. LEACH: OBJECTION, YOUR HONOR. THIS CALLS FOR
AN ANSWER OUTSIDE OF THE RELEVANT TIME PERIOD.

THE COURT: I'M GOING TO SUSTAIN THE OBJECTION
WITHOUT A FURTHER FOUNDATION.

MR. COOPERSMITH: OKAY.

Q. WHILE MR. BALWANI WAS THERE, THERANOS NEVER REFUNDED --
WHILE MR. BALWANI WORKED AT THERANOS, THERANOS NEVER REFUNDED
\$75 MILLION OR ANY AMOUNT TO WALGREENS; CORRECT?

A. CORRECT.

03:53PM 1 Q. THANK YOU.

03:53PM 2 NOTHING FURTHER.

03:53PM 3 THE COURT: ANYTHING FURTHER?

03:53PM 4 MR. LEACH: NO, YOUR HONOR. THANK YOU.

03:53PM 5 THE COURT: MAY THIS WITNESS WITH BE EXCUSED?

03:53PM 6 MR. LEACH: YES, YOUR HONOR.

03:53PM 7 MR. COOPERSMITH: YES, YOUR HONOR.

03:53PM 8 THE COURT: YOU'RE EXCUSED. THANK YOU VERY MUCH FOR

03:53PM 9 COMING IN. THANK YOU.

03:53PM 10 THE WITNESS: THANK YOU.

03:53PM 11 THE COURT: LADIES AND GENTLEMEN, THAT'S ALL OF THE

03:53PM 12 TESTIMONY THAT WE'RE GOING TO HAVE TODAY. I KNOW IT

03:53PM 13 DISAPPOINTS YOU WE'RE BREAKING A LITTLE EARLY.

03:54PM 14 BUT I DO WANT TO ADMONISH YOU NONETHELESS. WE'LL SEE YOU

03:54PM 15 TOMORROW AGAIN AT 9:00 O'CLOCK. BUT DURING THE BREAK, DO NOT

03:54PM 16 DO ANY INVESTIGATION, DO NOT WATCH OR READ OR DISCUSS THIS CASE

03:54PM 17 OR ANYTHING TO DO WITH IT WITH ANYONE.

03:54PM 18 I'LL ASK YOU THAT QUESTION AGAIN IN THE MORNING.

03:54PM 19 HAVE A GOOD EVENING, SAFE TRAVELS, AND WE'LL SEE YOU

03:54PM 20 TOMORROW MORNING. THANK YOU.

03:54PM 21 (JURY OUT AT 3:54 P.M.)

03:54PM 22 THE COURT: PLEASE BE SEATED. THANK YOU.

03:54PM 23 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT FOR THE

03:54PM 24 DAY. ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

03:54PM 25 ANYTHING FURTHER BEFORE WE BREAK FOR THE DAY, COUNSEL?

03:55PM 1 MR. SCHENK: YOUR HONOR, TWO BRIEF THINGS.

03:55PM 2 I THINK MS. WALSH IS COMING UP BECAUSE WE BOTH WANTED TO
03:55PM 3 DISCUSS WITH YOU QUESTIONS REGARDING HOW THE COURT WOULD LIKE
03:55PM 4 THE PARTIES TO HANDLE LOGOS ON DOCUMENTS.

03:55PM 5 WE'VE INFORMED THE DEFENSE THAT WE INTEND TO CALL
03:55PM 6 DR. CULLEN TOMORROW. THE COURT WILL RECALL THAT DR. CULLEN
03:55PM 7 WORKED AT SCHERING-PLOUGH.

03:55PM 8 THE GOVERNMENT INTENDS TO INTRODUCE, THROUGH DR. CULLEN,
03:55PM 9 VERSIONS OF THE VALIDATION REPORTS THAT WERE EXCHANGED, AND OF
03:55PM 10 COURSE THE VERSIONS THAT DR. CULLEN SAW DID NOT HAVE THE
03:55PM 11 SCHERING-PLOUGH LOGO ON IT.

03:55PM 12 VERSIONS THAT WERE SENT TO WALGREENS OR OTHERS DID, AND
03:55PM 13 DR. CULLEN'S TESTIMONY WILL BE THAT SHE DIDN'T AUTHORIZE THE
03:55PM 14 AFFIXING OF THE LOGO, AND SHE DOESN'T KNOW ANYBODY AT
03:55PM 15 SCHERING-PLOUGH THAT WOULD HAVE AUTHORIZED THE SCHERING-PLOUGH
03:55PM 16 LOGO.

03:55PM 17 IT IS THE GOVERNMENT'S INTENT TO ELICIT THAT TESTIMONY, TO
03:56PM 18 BE CLEAR, TO INTRODUCE THE VERSIONS OF THE DOCUMENTS THAT CAME
03:56PM 19 IN THROUGH THE HOLMES TRIAL AND THE TESTIMONY FROM DR. CULLEN
03:56PM 20 THAT SHE DID NOT AUTHORIZE PUTTING THE SCHERING-PLOUGH LOGO ON
03:56PM 21 THOSE DOCUMENTS.

03:56PM 22 BUT WE'RE MINDFUL OF THE PENDING MOTION BEFORE THE COURT,
03:56PM 23 AND I WANTED TO RAISE THAT BEFORE WE GET THERE.

03:56PM 24 THE COURT: THANK YOU. SO WE WILL HAVE -- JUST BY
03:56PM 25 WAY OF TIMING, WE'RE GOING TO HAVE -- WE'LL FINISH WITH

03:56PM 1 DR. PANDORI TOMORROW.

03:56PM 2 DO WE ANTICIPATE THAT WILL BE IN THE MORNING, OR WHAT

03:56PM 3 IS -- DO YOU HAVE ANY IDEA, MS. WALSH, WHEN YOUR TEAM WILL BE

03:56PM 4 FINISHED?

03:56PM 5 MS. WALSH: I THINK IT LIKELY WILL BE IN THE MORNING

03:56PM 6 WHEN WE FINISH.

03:56PM 7 THE COURT: OKAY. AND THERE WILL BE SOME REDIRECT

03:56PM 8 I'M SURE.

03:56PM 9 TIMING-WISE, I'M TRYING TO CAPTURE WHEN YOU WILL CALL THIS

03:56PM 10 WITNESS.

03:56PM 11 MR. SCHENK: I THINK WE WILL CERTAINLY STILL BE

03:56PM 12 EITHER IN THE CROSS OR THE REDIRECT OF DR. PANDORI BY THE

03:56PM 13 11:00, 11:30 BREAK, SO WE CAN PUNT OR TABLE THIS DISCUSSION

03:57PM 14 UNTIL THAT TIME.

03:57PM 15 BUT I'M NOT SURE WHETHER DR. PANDORI WILL TAKE US TO THE

03:57PM 16 1:00 P.M. BREAK, SO I WOULD GUESS IN THAT SECOND BLOCK.

03:57PM 17 THE COURT: ALL RIGHT. THANK YOU.

03:57PM 18 MS. WALSH.

03:57PM 19 MS. WALSH: YES, YOUR HONOR.

03:57PM 20 SO THAT THE COURT HAS THE EXHIBIT NUMBERS, AND I'M

03:57PM 21 TAKING -- THESE WERE THE EXHIBIT NUMBERS IN THE HOLMES TRIAL,

03:57PM 22 AND I THINK THEY WILL BE THE SAME.

03:57PM 23 EXHIBIT 259 IS THE SCHERING-PLOUGH REPORT WITH ONLY THE

03:57PM 24 THERANOS LOGO, AND WE HAVE NO PROBLEM, NO OBJECTION TO THAT

03:57PM 25 REPORT COMING IN THROUGH DR. CULLEN. SHE CAN AUTHENTICATE THAT

03:57PM 1 REPORT AND WE HAVE NO ISSUE WITH IT.

03:57PM 2 HOWEVER, WE DO HAVE AN ISSUE WITH THE SECOND VERSION OF
03:57PM 3 THE SCHERING-PLOUGH REPORT WITH THE TWO LOGOS FOR TWO REASONS.

03:58PM 4 I'M NOT SURE DR. CULLEN CAN REALLY AUTHENTICATE THAT
03:58PM 5 VERSION OF THE REPORT.

03:58PM 6 BUT PUTTING THAT ASIDE, I THINK THE CRUX OF IT IS THAT
03:58PM 7 SEEING THE TWO REPORTS AND THE DIFFERENCES AND DR. CULLEN
03:58PM 8 TESTIFYING THAT "I NEVER AUTHORIZED THIS" GOES TO THE HEART OF
03:58PM 9 OUR MOTION, AND WE WOULD OBJECT TO THAT SECOND REPORT, WHICH
03:58PM 10 WAS EXHIBIT 291, COMING IN THROUGH THIS WITNESS BEFORE THAT
03:58PM 11 ISSUE HAS BEEN RESOLVED.

03:58PM 12 THE COURT: OKAY. YOU JUST WANTED TO RAISE THAT FOR
03:58PM 13 ME NOW. THANK YOU. I APPRECIATE IT.

03:58PM 14 THANKS. AND WE'LL REVISIT THIS TOMORROW.

03:58PM 15 MS. WALSH: VERY GOOD.

03:58PM 16 THE COURT: ALL RIGHT. THANKS.

03:58PM 17 ANYTHING FURTHER.

03:58PM 18 MR. SCHENK: YES, ONE OTHER BRIEF TOPIC.

03:58PM 19 I'M SURPRISED I HAVE TO RAISE THIS, BUT I AM CONCERNED
03:58PM 20 THAT THE DEFENSE IS ASKING QUESTIONS THAT THEY DON'T HAVE A
03:58PM 21 GOOD FAITH BASIS TO ASK.

03:58PM 22 THE COURT SAW SEVERAL EXAMPLES OF THAT NOW. THE IDEA THAT
03:59PM 23 MS. SPIVEY WOULD KNOW WHETHER MR. BALWANI WROTE A CHECK TO THE
03:59PM 24 I.R.S., THAT'S NOT THE ONLY EXAMPLE OF INSTANCES IN WHICH
03:59PM 25 TESTIMONY SUGGESTED THAT THERE WAS NOT A BASIS TO ASK

03:59PM 1 FOLLOW-UP, AND YET THAT FOLLOW-UP OCCURRED.

03:59PM 2 THE SECOND EXAMPLE THAT COMES TO MIND IS QUESTIONS
03:59PM 3 REGARDING THE BOARD REFUSING THE \$1 SALARY REQUEST OF
03:59PM 4 MR. BALWANI.

03:59PM 5 THERE WAS ALREADY A QUESTION AND ANSWER THAT SUGGESTED
03:59PM 6 THAT MS. SPIVEY DID NOT KNOW THE COMMUNICATIONS BETWEEN THE
03:59PM 7 BOARD AND MR. BALWANI REGARDING SALARY DEMANDS, AND YET THERE
03:59PM 8 WAS STILL THE FOLLOW-UP.

03:59PM 9 THE DEFENSE CAN REFRESH WITH ANYTHING, ASK QUESTIONS, BUT
03:59PM 10 THEY HAVE TO HAVE A GOOD FAITH BASIS TO ASK THOSE QUESTIONS,
03:59PM 11 AND THEY HAVE TREADED BEYOND THE LINE OF WHAT, AT LEAST IN THE
03:59PM 12 GOVERNMENT'S VIEW, IS AN APPROPRIATE QUESTION TO ASK WHEN THE
04:00PM 13 WITNESS HAS ALREADY SAID IN ONE INSTANCE THAT SHE WAS UNAWARE
04:00PM 14 OF INFORMATION, AND IN THE SECOND INSTANCE, THERE WOULD BE NO
04:00PM 15 GOOD FAITH BASIS TO THINK THAT SHE KNEW ABOUT PERSONAL CHECKS
04:00PM 16 MR. BALWANI WROTE TO THE I.R.S.

04:00PM 17 ON TOP OF THAT, THERE WERE INSTANCES IN WHICH THE COURT
04:00PM 18 RULED ON OBJECTIONS, AND THE DEFENSE IGNORED THE COURT'S RULING
04:00PM 19 AND ASKED THE QUESTION A SECOND TIME.

04:00PM 20 AND I WANTED TO RAISE BOTH OF THOSE BECAUSE I THINK WE'RE
04:00PM 21 STILL EARLY IN THE TRIAL. WE'RE ON OUR THIRD WITNESS.

04:00PM 22 AND I HOPE TODAY WAS AN ABERRATION, BUT LET'S MARK TIME,
04:00PM 23 AND I WANT TO NOTE THAT FOR THE COURT.

04:00PM 24 AND IF IT REQUIRES A SIDE-BAR IN THE FUTURE, IF WE SEE
04:00PM 25 FURTHER INSTANCES OF THIS, THE COURT WILL NOW KNOW WHY THE

04:00PM 1 GOVERNMENT IS ASKING FOR A SIDE-BAR ON THIS ISSUE, OR IF THERE
04:00PM 2 IS ANYTHING FURTHER THE GOVERNMENT COULD PROVIDE TO THE COURT
04:00PM 3 TO PROVIDE ASSISTANCE ON THIS, HIGHLIGHTING PORTIONS OF THE
04:00PM 4 TRANSCRIPT, WE WOULD BE HAPPY TO DO THAT.

04:00PM 5 THE COURT: OKAY. THANK YOU.

04:00PM 6 MS. WALSH, DO YOU WISH TO BE HEARD ON THIS?

04:00PM 7 MS. WALSH: YOUR HONOR, I DIDN'T THINK THERE WAS NOT
04:01PM 8 A GOOD FAITH BASIS FOR THE QUESTIONS. I WASN'T THE QUESTIONER,
04:01PM 9 OF COURSE.

04:01PM 10 AND I THOUGHT THAT MS. SPIVEY ANSWERED, WHEN SHE DIDN'T
04:01PM 11 KNOW, THAT SHE DIDN'T KNOW. SHE WASN'T AWARE OF --

04:01PM 12 THE COURT: BUT I THINK THE PART -- PARDON ME.

04:01PM 13 BUT I THINK THE POINT WAS IN CROSS-EXAMINATION, OF COURSE,
04:01PM 14 IT'S CROSS-EXAMINATION, BUT I THINK YOUR COLLEAGUE ASKED A
04:01PM 15 QUESTION ABOUT MR. BALWANI WRITING A CHECK AND PAID TAXES ON
04:01PM 16 SOMETHING AND ADVANCED THAT INFORMATION A COUPLE OF TIMES.

04:01PM 17 AND MR. COOPERSMITH, THE QUESTIONER, IS COMING UP BEHIND
04:01PM 18 YOU HERE.

04:01PM 19 MS. WALSH: VERY GOOD.

04:01PM 20 MR. COOPERSMITH: WELL, YOUR HONOR, SINCE I WAS THE
04:01PM 21 QUESTIONER, I THOUGHT IT MIGHT MAKE SENSE FOR ME TO ADDRESS
04:01PM 22 THIS.

04:01PM 23 THE COURT: YES, OF COURSE.

04:01PM 24 MR. COOPERSMITH: SO LET'S TAKE THE ISSUE OF THE
04:01PM 25 I.R.S. FIRST.

04:01PM 1 WE SAW IN EVIDENCE THAT MS. SPIVEY, AS PART OF HER JOB,
04:01PM 2 SHE TESTIFIED SENT A DOCUMENT TO THE I.R.S. SAYING THAT
04:01PM 3 MR. BALWANI HAD ELECTED TO HAVE CERTAIN INCOME.

04:02PM 4 AND WE HAVE A GOOD FAITH BASIS FOR ASKING THE QUESTION.

04:02PM 5 NOW, AS MS. WALSH JUST SAID, IF SHE DOESN'T KNOW, SHE'S OF
04:02PM 6 COURSE FREE TO SAY SHE DIDN'T KNOW, AND THAT'S IN FACT WHAT
04:02PM 7 HAPPENED. SHE SAID SHE DIDN'T KNOW.

04:02PM 8 BUT WE'RE NOT ASKING QUESTIONS THAT WE DON'T BELIEVE WE
04:02PM 9 HAVE A GOOD FAITH BASIS FOR ASKING.

04:02PM 10 AND I'LL JUST SAY THAT THE ONE THING THAT WE HAVE AS A
04:02PM 11 DEFENSE THAT THE GOVERNMENT, OF COURSE, DOESN'T, IS WE HAVE A
04:02PM 12 CLIENT WHO WAS THERE, AND WE CAN ASK QUESTIONS BASED ON WHAT WE
04:02PM 13 BELIEVE IN GOOD FAITH HAPPENED.

04:02PM 14 AND IF MS. SPIVEY OR ANY OTHER WITNESS DOESN'T REMEMBER
04:02PM 15 SOMETHING, THAT DOESN'T MEAN WE DON'T HAVE A GOOD FAITH BASIS.

04:02PM 16 WE ARE NOT ASKING QUESTIONS THAT WE THINK AREN'T TRUE.

04:02PM 17 WE HAVE A GOOD FAITH BASIS, FOR EXAMPLE, FOR KNOWING THAT
04:02PM 18 THE BOARD DIDN'T WANT TO HAVE TO PAY MR. BALWANI ONLY A DOLLAR
04:02PM 19 AND THOUGHT HE SHOULD TAKE A PROPER SALARY OF 99,000, SO WE
04:02PM 20 ASKED MS. SPIVEY THE QUESTION. SHE SAID SHE DIDN'T KNOW.
04:02PM 21 THAT'S FINE.

04:02PM 22 BUT I DON'T SEE MR. SCHENK'S POINT THAT, YOU KNOW, ASKING
04:03PM 23 A QUESTION WHEN THE WITNESS IS FREE TO SAY "I DON'T KNOW" IS
04:03PM 24 LACK OF A GOOD FAITH BASIS.

04:03PM 25 THE COURT: MR. SCHENK.

04:03PM 1 MR. SCHENK: YOUR HONOR, THE LACK OF A GOOD FAITH
04:03PM 2 BASIS CAN COME IN TWO FOLDS. YOU CAN KNOW THE THING YOU'RE
04:03PM 3 ASKING IS NOT TRUE, BUT YOU CAN ALSO KNOW THAT THERE'S NO WAY
04:03PM 4 IN THE WORLD THAT THE WITNESS HAS ANY INFORMATION ABOUT THAT
04:03PM 5 SUBJECT.

04:03PM 6 THE COURT: I THINK THAT'S WHAT HE'S TALKING ABOUT,
04:03PM 7 AND HOW WOULD SHE KNOW WHAT THE BOARD ACTED UPON, OR HOW WOULD
04:03PM 8 SHE KNOW ABOUT HIS TAXES?

04:03PM 9 AND I THINK WHAT I HEARD, AND MY SENSE IS WHAT MR. SCHENK
04:03PM 10 IS SAYING -- AND I'LL LET HIM SPEAK, OF COURSE -- BUT YOU PUT
04:03PM 11 THE ANSWER IN FRONT OF THE JURY AND THEN ASK HER IF SHE KNOWS
04:03PM 12 THAT'S TRUE, THAT WOULD THEN SUGGEST TO THE JURY THAT IT
04:03PM 13 ACTUALLY DID HAPPEN.

04:03PM 14 IS THAT, IS THAT YOUR POINT?

04:03PM 15 MR. SCHENK: YES, YOUR HONOR.

04:03PM 16 WHEN THE ATTORNEY IS TESTIFYING AND NOT THE WITNESS,
04:03PM 17 BECAUSE THERE'S NO WAY THE WITNESS ACTUALLY CAN ANSWER YES OR
04:03PM 18 NO TO THE QUESTION.

04:04PM 19 MR. COOPERSMITH: I'M SORRY, YOUR HONOR. I REALLY
04:04PM 20 DON'T SEE THIS POINT AT ALL.

04:04PM 21 I THINK THAT IT'S -- PERHAPS THE GOVERNMENT DOESN'T LIKE
04:04PM 22 THAT QUESTION, BUT, YOU KNOW, THE COURT INSTRUCTS THE JURY THAT
04:04PM 23 WHAT THE LAWYERS SAY IS NOT EVIDENCE.

04:04PM 24 THE GOVERNMENT IS FREE IN CLOSING ARGUMENT TO, IF
04:04PM 25 SOMETHING BOTHERS THEM, TO EXPLAIN WHAT THE WITNESS SAID AND

04:04PM 1 WHAT THE WITNESS DIDN'T SAY.

04:04PM 2 AND MY UNDERSTANDING OF A GOOD FAITH BASIS IS IF
04:04PM 3 MS. SPIVEY -- AND I'LL TAKE HER EXAMPLE -- SHE WORKED AT THE
04:04PM 4 COMPANY FOR MANY, MANY YEARS, AND SHE WAS ABLE TO RECOGNIZE THE
04:04PM 5 FORMAL BOARD MINUTES, SHE KNEW THAT THE BOARD HAD MET, SHE KNEW
04:04PM 6 WHEN MR. BALWANI WAS HIRED, SO IT'S QUITE POSSIBLE THAT SHE
04:04PM 7 KNOWS ABOUT THE \$1. BUT IF SHE DOESN'T, SHE'S FREE TO SAY
04:04PM 8 THAT.

04:04PM 9 BUT I DON'T SEE THAT THAT'S A LACK OF A GOOD FAITH BASIS
04:04PM 10 FOR ME TO ASK THE QUESTION.

04:04PM 11 AND THAT'S THE ESSENCE OF CROSS. THEY LAWYER, AS THEY
04:04PM 12 TEACH YOU IN LAW SCHOOL, THE LAWYER IS BASICALLY TESTIFYING AND
04:04PM 13 THE WITNESS CAN SAY YES, NO, OR I DON'T KNOW.

04:04PM 14 I DON'T TAKE MR. SCHENK'S POINT AT ALL, AND I THINK THAT
04:05PM 15 WE'RE ASKING QUESTIONS THAT WE BELIEVE ARE IN GOOD FAITH GOOD
04:05PM 16 QUESTIONS, AND, AGAIN, THE WITNESS CAN SAY WHATEVER THEY WANT.

04:05PM 17 THE COURT: OKAY.

04:05PM 18 ANYTHING FURTHER, MR. SCHENK?

04:05PM 19 MR. SCHENK: IF THE DEFENSE OR IF MR. COOPERSMITH
04:05PM 20 DOESN'T SEE THE POINT HERE, THEN THE COURT SHOULD BE EVEN MORE
04:05PM 21 CONCERNED.

04:05PM 22 THE COURT: OKAY. WELL, THANKS FOR THE INFORMATION.
04:05PM 23 I'M WELL INFORMED.

04:05PM 24 THANK YOU.

04:05PM 25 (COURT ADJOURNED AT 4:05 P.M.)

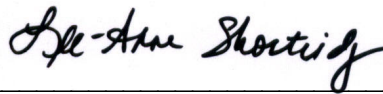
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 5, 202